

Contemporary Moral Theology

Rev. John C. Ford, S.J. and Gerald Kelly, S.J.

Volume Two

Marriage Questions

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Marriage Questions

by John C. Ford, S.J.
and Gerald Kelly, S.J.

VOLUME TWO

Contemporary Moral Theology

A vast amount of Catholic writing has appeared recently dealing with the complex, practical aspects of the sacrament of marriage. Fathers Ford and Kelly have been two of the most frequently outspoken theologians on such matters, explaining traditional principles and defining laws and pronouncements of the Church—always with wisdom, charity, and respect.

This second volume in *Contemporary Moral Theology* reflects a remarkable scholarship which has mastered not only the totality of Catholic teaching on marriage, but a deep, sound grasp of the radical transformation in the Protestant theology of marriage

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CONTEMPORARY MORAL THEOLOGY

Volume II



MARRIAGE
QUESTIONS

Contemporary
Moral Theology

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by

John C. Ford, S.J. *and* Gerald Kelly, S.J.



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Foreword

THE PRESENT WORK, *MARRIAGE QUESTIONS*, is Volume II in the series *Contemporary Moral Theology* which was initiated five years ago. As explained in the Foreword to Volume I, the series began as an outgrowth of the "Notes on Moral Theology" which appeared regularly in *Theological Studies* beginning in 1941. The plan calls for the selection of some general field of moral theology, and the development in greater depth of selected topics of contemporary interest within that field.

The present volume, therefore, is not a treatise on the sacrament of marriage. We have selected certain questions in the moral theology of marriage, and have attempted to present them in a way which will be useful to priests, theologians, theological students and others who have a professional interest in the problems chosen for discussion.

The book is divided into two parts. The first is more speculative and attempts a theory of the purposes of Christian marriage. The problem here is to vindicate, theologically and canonically, for the so-called personalist (secondary) ends of marriage the essential place they deserve, while at the same time defending their essential subordination to the primary ends. The second part is more practical, dealing

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with various aspects of the sexual use of Christian marriage.

We cannot mention here all those who have helped us to complete this work. We must express publicly, however, our special gratitude to Richard A. McCormick, S.J., professor of moral theology at West Baden College; Joseph S. Duhamel, S.J., professor of moral theology at Woodstock College; and John J. Lynch, S.J., professor of moral theology at Weston College, each of whom read our entire manuscript and made valuable suggestions.

The same circumstances which have so long delayed the appearance of this volume do not permit the authors to hope that they can continue the series themselves. It is their sincere wish that it will be continued by other writers.

THE AUTHORS

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Part I

The Ends of Christian
Marriage

1



Contemporary Protestant Views on the Ends of Marriage

“COMPANIONSHIP AND PARENTHOOD,” says the Mansfield Report, after a brief examination of Scriptural sources, “are, therefore, established together as the purposes of marriage from the beginning, with sexual union as the ordained servant of both. Marriage has its fullness where both are attained. (Gen. 2:18-25; Matt. 19:4 ff.; 13 ff.).”¹

The ends of marriage, as we shall see, have been variously enumerated, but the principal discussion today centers about the comparative importance and mutual relationships of the two purposes: companionship and parenthood. These purposes are referred to more commonly in Catholic writings as mutual help and the procreation and rearing of children. The development of contemporary Protestant

¹ *Responsible Parenthood and the Population Problem*, Report of an international study group to the World Council of Churches and the International Missionary Council (often cited as “The Mansfield Report”). Text given in full by Richard M. Fagley, *The Population Explosion and Christian Responsibility* (New York: Oxford University Press, 1960), pp. 225-234 at 230.

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thought on this topic is best illustrated by the successive statements issued by the Lambeth Conferences during the past fifty years. These statements, becoming increasingly influential in Protestant circles generally, have dealt with the ends of marriage in connection with the more practical matter of the morality of contraception.

A little over fifty years ago, in a resolution which did not mention the ends of marriage explicitly, the Lambeth Conference of 1908 rejected contraception without qualification.² Twelve years later the Conference of 1920, in its encyclical letter, declared that marriage, in addition to making the partners one flesh, "has essentially the aim of bringing other lives into the world."³ The Report Upon Problems of Marriage and Sexual Morality of that year described the purposes of marriage as follows:

Marriage is intended for the hallowing and control of natural sexual instincts; for the procreation of children, and their nurture and training; and for the mutual companionship and support of husband and wife in good and evil estate. To ignore or defeat any of these purposes is a violation of God's institution.⁴

And in Resolution 68, the body of Bishops rejected contraception again (though in less absolute terms), appealing to "the primary purpose for which marriage exists, namely the continuation of the race through the gift and heritage of children."⁵

² *The Lambeth Conferences (1867-1930)*, The reports of the 1920 and 1930 Conferences with selected resolutions from the Conferences of 1867, 1878, 1888, 1897 and 1908, (London: S.P.C.K., 1948), Resolution 41 of the 1908 Conference, p. 295.

³ *Conference of Bishops of the Anglican Communion* [Lambeth Conference, 1920], (London: S.P.C.K., 1920), Encyclical Letter, p. 17.

⁴ *Op. cit.*, Report of the committee to consider and report upon problems of marriage and sexual morality, p. 110.

⁵ *Op. cit.*, Resolution 68, p. 44.

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The Conference of 1930 continued to assert (in Resolution 13) that "the primary purpose for which marriage exists is the procreation of children."⁶ But in its famous Resolution 15, by a vote of 193 to 67, it approved contraceptive practices under certain conditions.⁷ The Report on Marriage and Sex of that year apparently represents the opinion of the majority of the Bishops when it states:

Children are the primary end of the intercourse to which marriage leads. Married people do wrong when they refuse to have children whom they could train to serve God and add to the strength of the nation. But intercourse has also a secondary end within the natural sacrament of marriage. Where for any morally sound reason the first end is to be ruled out, it does not necessarily follow that the secondary end must be ruled out also, provided that self-control is exercised, and husband and wife have truly examined their consciences upon the matter.⁸

Finally, in 1958, the encyclical letter, as well as Resolution 115, approved of contraception, no longer asserting that procreation is the primary end of marriage.⁹ Resolution 113 reminds Christians that "sexual love is not an end in itself nor a means of self-gratification . . ."¹⁰ The most important statement of the 1958 Conference, however, is the Report on the Family in Contemporary Society, for this report attempts to present the theology of the purposes of marriage and their relation to one another.¹¹ It has been very in-

⁶ *The Lambeth Conference 1930* (London: S.P.C.K. and New York: Macmillan, about 1930), Resolution 13, p. 43.

⁷ *Op. cit.*, Resolution 15, pp. 43, 44.

⁸ *Op. cit.*, Report on Marriage and Sex, p. 92.

⁹ *The Lambeth Conference 1958, The Encyclical Letter from the Bishops together with the Resolutions and Reports*, (London: S.P.C.K. and Seabury Press, 1958), Encyclical letter at p. 1.22.

¹⁰ *Op. cit.*, Resolution 115 at p. 1.56.

¹¹ Since the bishops assume no collective responsibility for the Committee

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fluent, apparently, in forming Protestant opinion both inside and outside the Anglican communion. We select some excerpts from the part of this report which is headed "Theology of Sexuality and the Family."

The Purposes of Marriage. First of all the family is rooted in the elemental processes of life itself. Human reproduction—human parenthood—is vastly more complicated than the reproduction of plants or the simpler animals. . . .

The commandment in Genesis to "be fruitful and multiply" reflects this biological function. More significantly, it raises it to the level of God's creative purpose. . . .

The Biblical revelation, however, does not limit the function of sexuality and the family to the reproductive purpose. Equally deep-rooted in Genesis is the reflection of a second factor—the need of man and woman for each other, to complement and fulfill each other and to establish a durable partnership against the loneliness and rigour of life. It was not good for man to be alone, and God made a helpmeet for him. This relationship of man and woman—of husband and wife—is rooted in God's creative purpose equally with the procreative function of sexuality. "For this reason shall a man leave his father and mother and be joined to his wife (Gen. 2:18-25; Matt. 19:4 f.)."

Thus in the heart of the Biblical teaching about creation, two great insights into the nature and purpose of sexuality and the family are lodged. They are not subordinated one to another; their relationship, in the developing experience of Israel, is to be found in yet a third area—that of the place of the family in giving responsible security to the children born of the love of husband and wife. . . .

To summarize, three purposes—three functions—are inter-

Reports, it may sound strange to say that a Report contains the most important statement of a Lambeth Conference. In this instance, the importance consists in the Report's value for interpreting the more authoritative statements of the Conference and, as we suggest in our text, in its influence on Protestant thought.

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woven in human sexuality. Each of them is profoundly rooted in human experience and in God's revelation. The procreation of children, the fulfillment and completion of husband and wife in each other, and the establishment of a stable environment within which the deepest truths about human relationships can be expressed and communicated and children can grow up seeing and learning what mature life is really like—these are the great purposes which, in God's loving will, marriage and the family are created to serve.

Relationship between the Purposes. It has been common, in Christian theology, to mention the procreative function first, as if to say that it is the ruling purpose. So it is, in the sense that no marriage would be according to God's will which (where procreation is possible) did not bear fruit in children. But it is clearly not true that all other duties and relationships in marriage must be subordinate to the procreative one. Neither the Bible nor human experience supports such a view.¹²

The Report then goes on to explain the concept of responsible parenthood. Marriage calls for the exercise under God of a great many responsible, free, choices, choices which have become increasingly difficult partly because of the well-nigh fatal ease with which the purposes of marriage can now be separated from one another with the help of contraceptive techniques. Thus all husbands and wives are faced with the commanding problem of maintaining a right relationship among the three great purposes of marriage.

This report on "The Family in Contemporary Society" was undoubtedly influenced by the writings of Derrick Sherwin Bailey, an Anglican divine whose scholarly work has probed deeply into the theological history of sexuality in marriage, and into the relation between the purposes of marriage. Dr. Bailey recognizes that the traditional Christian

¹² *Op. cit.*, pp. 2.142-2.146.

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view makes procreation the primary purpose of marriage, but shows that early Anglican thought first departed from this tradition, later re-embraced it, and now has rejected it again.¹³ His own view is that the one flesh union of husband and wife is never subordinated to the family. He summarizes his position as follows:

First, as to marriage: it is no longer possible to rest content with the traditional assumption that its chief purpose is to populate earth and heaven. Ontologically, as the nature of sex itself implies, marriage is a unique, unitive relation of male and female in one flesh, characterized by a distinctive and all-embracing common life to which alone the act of coitus belongs. . . . Christian tradition has always maintained that the purpose of coitus, considered per se, is generation. Provided generation is not artificially excluded however, it has long been allowed that coitus is also permissible for the relief of fallen man's concupiscence, while latterly it has been conceded that it may serve for the expression of love, the safeguarding of the home, and the comfort of husband and wife. Can the traditional view of coitus as primarily generative be upheld?

Careful consideration suggests that coitus has, in fact, two distinct purposes, neither of which can be given precedence over the other. It is at once conceptional [procreative] and relational [serving the personal relationship of the partners], for in addition to promoting generation it is also the means whereby the one-flesh union is established and consolidated, husband and wife express and deepen their mutual love, and the sexual impulse is relieved of its destructive potentialities by expending itself in acts of affection. It is regarded as allowable [even by Roman Catholics] to select against the conceptional and in favor of the relational purpose of coitus by taking advantage of

¹³ Derrick Sherwin Bailey, *Sexual Relation in Christian Thought* (New York: Harper and Bros., 1959), p. 197 ff. and p. 257 ff.; *Id.*, *The Mystery of Love and Marriage* (New York: Harper and Bros., 1952), pp. 105, 106.

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woman's periodical infertility; may selection also be effected by artificial means?¹⁴

The denial that procreation is the primary end, so clearly asserted in these Anglican writings, has become almost a commonplace in recent Protestant thought, as a few examples will illustrate. Leslie Weatherhead:¹⁵ "Modern Protestants recognize the two functions of sex as at least equal." Emil Brunner:¹⁶ ". . . The Christian ethic must stand for the independent meaning of the erotic and sex element within marriage as an expression of love, not merely as a means of procreation." Otto Piper holds that sex does not require justification by procreation because it has a significance of its own in the personal relationship it establishes. The fundamental purpose of sex, according to him, is the creation of one flesh between man and woman. Children come as an extra blessing, a sort of bonus. He specifically rejects the Catholic view of the primary and secondary ends of marriage.¹⁷

Reinhold Niebuhr concedes indeed that "it is not possible to escape the natural fact that the primary purpose of bisexuality in nature is that of procreation." But this is on the biological level. His point is to reject this biological

¹⁴ "Marriage and the Family: Some Theological Considerations," in *The Human Sum*, Editor, C. H. Rolph, (New York: Macmillan, 1957), pp. 201-224 at pp. 216-218 and p. 212.

¹⁵ Leslie Weatherhead, *The Mastery of Sex Through Psychology and Religion* (New York: Macmillan, 1932), p. xxii and p. 125, cited by William Graham Cole, *Sex in Christianity and Psychoanalysis* (New York: Oxford University Press, 1955), p. 169.

¹⁶ Emil Brunner, *The Divine Imperative* (transl. Olive Wyon) (London: Lutterworth Press, 1937), p. 368, cited by Bailey, *The Mystery of Love and Marriage* (New York: Harper and Bros., 1952), p. 107.

¹⁷ Otto A. Piper, *The Christian Interpretation of Sex* (New York: Scribner, 1941), p. 65, cited by Cole, *op. cit.*, p. 173, and cf. revised work of Piper: *The Biblical View of Sex and Marriage* (New York: Scribners, 1960), p. 30, etc.

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function as a universal criterion of the morality of the sex relationship in marriage, and it seems very unlikely that he would accept an essential subordination of secondary to primary ends in marriage.¹⁸

Karl Barth recognizes the legitimacy of contraception without explicit reference to the comparative rank of the ends of marriage.¹⁹ Richard M. Fagley sees in this passage of Barth, as well as in the one just cited from Niebuhr, the agreement of these theologians

on the validity of marital union apart from the purpose of procreation, which gives a sanction for the limitation and spacing of births. Other theologians tend in the same direction. Paul Tillich in *Love, Power, and Justice*, for example, argues in favor of giving the libido a higher status in theological analysis. It is the 'normal drive towards vital self-fulfillment,' though it needs to stand under the ultimate criterion of the *agapē* quality of love. Pleasure for the sake of pleasure is a perversion. 'Unperverted life strives . . . for union with that which is separated from it, though it belongs to it.'²⁰

Among French Protestants we have contemporary statements from M. Reguilhem and Jacques Ellul. Reguilhem:

It is true to say that marriage is justified independently of procreation. It is a partnership in living founded on the union of husband and wife. This partnership gives their union visible expression and includes its physical sign—the sexual relationship.²¹

¹⁸ Reinhold Niebuhr, *The Nature and Destiny of Man: I. Human Nature* (Gifford Lectures), (New York: Scribner, 1941), p. 281 ff. at p. 282.

¹⁹ Karl Barth, *Die Kirchliche Dogmatik*, vol. III, Part 4, (Zürich: Evangelischer Verlag A. G. Zollikon, 1951), pp. 301–310.

²⁰ Richard M. Fagley, *The Population Explosion and Christian Responsibility* (New York: Oxford University Press, 1960), p. 199.

²¹ M. Reguilhem, in *Réforme*, 10 Nov. 1956, p. 6, quoted by Stanislas

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For Jacques Ellul the essential purpose of marriage as a vocation is to glorify God. Catholics agree with this in a sense which we shall explain in Chapter 8, but he insists on it to the point of denying that procreation is the end or an essential element of marriage:

Marriage is essentially a new state to which God calls man, not so that he may serve natural needs but the deepest needs of all, those that arise from his share in the Redemption. This state is permanent and marriage is revealed as a "work" on which husband and wife are continually engaged. The purpose of this work is to give glory to God. Consequently, procreation is neither the end nor an essential element of marriage. The children who are born may add something to it, but marriage is complete in itself without them, since its mainspring is its spiritual purpose.²²

That there is a growing Protestant consensus and a developing Protestant theology on the relation of the ends of marriage to one another is evidenced clearly in the work of Richard M. Fagley, *The Population Explosion and Christian Responsibility*. His final chapter, "The Ecumenical Movement and the Way Forward," reflects not only his own views, but, we feel sure, the views of a large number of Protestant bodies. Considering both the purposes of marriage and the purposes of the marriage act, he writes as follows:

A precondition for the right use of sex is provided by the divine institution of marriage, through which by God's grace

de Lestapis, S.J., *Family Planning and Modern Problems* (New York: Herder and Herder), 1961, p. 27.

²² Jacques Ellul, *Position des Eglises à l'égard de la Famille*, in: *Renouveau des idées sur la Famille*, I.N.E.D., 1954, pp. 270-271, quoted by Lestapis, loc. cit.

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husband and wife are enabled to become "one flesh." This union is expressed both in physical communion and in parenthood, but it transcends both. It is primarily a spiritual reality, as Jesus taught. Parenthood can be an important fulfillment of marriage, though the childless marriage is not less valid for that reason. Procreation is an important but not an essential end of marriage, and the marital obligation in regard to parenthood is contingent upon the total purposes of the marriage. The primary purpose of marriage is the perfecting of the 'one flesh' union itself, whether expressed in parenthood, marital companionship, or both. At a deeper level, the primary purpose of marriage, like the rest of life, is to serve and worship God.

If procreation is not the primary purpose of marriage, even less is it the essential purpose of the marital act. The distinction between the conjugal act as a means to procreation and as a means to the furtherance of *henosis* has always been implicit. But the new knowledge of ovulation and of contraception given to man lifts the freedom of the marital act to a new level of ethical decision. Even if the begetting of children were the primary purpose of marriage, it would not follow that each conjugal act must leave open the possibility of conception. The other purposes of marriage have their rights, and the exercise of these rights through contraception would not of itself determine whether the purpose called 'primary' is served or denied. Only the total marriage relationship determines that. The argument here, however, is that procreation is not the primary purpose of marriage. Consequently, the marital act is even less bound to the purpose of procreation. The decision in regard to procreation is a free ethical decision, insofar as the husband and wife are concerned.²³

Fundamentally, this is the thinking of the Mansfield Report which we quoted in the opening paragraph of this chapter. This report deserves special mention here because it

²³ *Op. cit.*, pp. 230-31.

Contemporary Protestant Views on the Ends of Marriage summarizes views to which large numbers of Protestant thinkers now subscribe. The report was made by an international study group convened under the auspices of the World Council of Churches and the International Missionary Council. The group met at Mansfield College, Oxford, April 12–15, 1959. Here are some passages from their report which are immediately relevant to our problem:

Companionship and parenthood are therefore established together [that is, equally] as the purposes of marriage from the beginning, with sexual union as the ordained servant of both. . . .

A knowledge of the relation of sexual love to the procreative process . . . enables husband and wife to decide, within the Providence of God, whether any one act of intercourse shall be for the enrichment or expression of their personal relationship only, or for the begetting of a child also. . . .

That these two purposes of the act are thus separable, within the divine ordinance of the marriage covenant, is evident from the nature of the act itself, which is known to fulfill the first when it is incapable of fulfilling the second, either through sterility, or in times of periodic infertility and after the age of childbearing in woman. Sexual intercourse within marriage has in itself a goodness given by God, even when there is neither the possibility nor the immediate intention to beget children.²⁴

Like most treatments of this problem, whether by Catholics or by Protestants, the question of the ends of marriage is here inextricably intertwined with that of the ends of the marriage act. This is hard to avoid when the immediate practical concern is the lawfulness of contraception in relation to population problems. But as Dr. Bailey notes: "The fundamental issue is not the morality of contraception but

²⁴ *The Mansfield Report*, text in Fagley, *op. cit.*, pp. 225–234 at 230–231.

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the meaning and purpose of marriage.”²⁵ The Mansfield Report speaks more explicitly of the separability and independence one from another of the purposes of the marriage act. But there can be no doubt that those who formulated the report, pointing to companionship and parenthood as the purposes of marriage, considered the purposes of marriage itself to be separable and independent also, and would reject the Catholic doctrine that the secondary ends are essentially subordinated to the primary. To this effect we have the testimony of Dr. Fagley, who was a member of the study group that submitted the report:

The group agreed that . . . within the covenant companionship and parenthood have equally fundamental status. Together they make for the fullness of marriage, but companionship is independently justified.²⁶

On February 23, 1961 the National Council of Churches of Christ in the U.S.A. made a pronouncement on responsible parenthood which embodies in substance the positions adopted in the Mansfield Report. “Sanctification and mutual perfection” are the terms used to describe the basic purpose of Christian marriage,

which can be served through parenthood, companionship and vocation. . . . Vocation . . . normally includes parenthood and family life as major elements, but can assert a separate or even conflicting claim on conscience. Just as vocation may enjoin celibacy upon those to whom the gift is given (Matthew XIX, 11) so the calling of the couple may in certain circumstances

²⁵ In *The Human Sum*, (Editor, C. H. Rolph), (New York. Macmillan, 1957), p. 216. And Piper holds the fundamental question is not the meaning and purpose of marriage, but the meaning and purpose of sex. See Chapter 7, note 7.

²⁶ *Op cit*, p. 216.

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enjoin family limitation. . . . Most of the Protestant churches hold contraception and periodic continence to be morally right when the motives are right. . . . Periodic continence . . . is not inherently superior from a moral point of view. The general Protestant conviction is that motives, rather than methods, form the primary moral issue, provided the methods are limited to the prevention of conception.²⁷

The fundamentals of the Protestant position may now be briefly summarized.²⁸ (1) There is no essential subordination of the ends of marriage to one another. They are at least of equal rank and dignity, and being independent of one another can justifiably be separated from one another. (2) Contraception is at times and under certain conditions permissible. (3) The duty of responsible parenthood can justify and even make obligatory the use of contraceptives in marriage; in fact it becomes part of the Christian vocation of some couples to practice contraception.

Catholic doctrine rejects all three of these positions, but in the first part of this volume we are concerned almost exclusively with the first of them.

All three of these positions represent changes which have taken place in Protestant thinking during the present century. At the beginning of the century there would have been little opposition from Anglicans, as we have seen, or of

²⁷ The report goes on to condemn abortion "except when the health or life of the mother is at stake." Sterilization as a means of family limitation is not outlawed: "we are constrained to point out the hazards in sterilization and to stress the possibility of its use only after the most thoughtful consideration of all the factors involved." The full text of the pronouncement of the National Council of Churches of Christ in the U.S.A. is reported in *The New York Times*, Febr. 24, 1961, p. 16.

²⁸ Obviously there is no official Protestant position on this matter. There are various Protestant positions; cf. Cole, *Sex in Christianity and Psychoanalysis* (New York: Oxford University Press, 1955), p. 164. But there is a growing Protestant consensus on the points referred to; cf. Fagley, *op. cit.*, Chapters XIII and XIV.

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others, to the statement that procreation and rearing of children are the primary ends of marriage. Before 1900 it would have been difficult indeed to find any organized Protestant body defending the moral lawfulness of contraception. And consequently, though the duty of responsible parenthood was recognized by Catholics, by Protestants, and by everyone else, and reliance on human as well as on divine providence in this as in all man's free activity was acknowledged, hardly anybody thought that contraception was permissible, much less obligatory, as a measure of human providence in fulfilling the duty of responsible parenthood.

What has brought about these changes? At this point we can merely suggest some of the reasons. One is the growing tendency of Protestants to accept situationism, with its rejection of absolute moral principles and its suspicion, if not complete rejection, of abstract, universal, moral negatives. Another reason is the lack of an infallible teaching authority. The more immediate reasons seem to us to be: First, the gradual emergence in modern thought of sexual fulfillment in marriage as a positive value of intrinsic human worth, needing not to be excused. This is due in part to the important discoveries of dynamic psychology in the present century, but also to a theological development which took place over the course of centuries in both Catholic and Protestant thought. Secondly, the discovery of new physiological facts about spermatogenesis, ovulation, the nature of the sex act and its relation to the physiology of reproduction. Thirdly, more recently, the pressures of the population problem. Finally, we think it important to point out even now that the concept of the "natural marriage act" as a criterion of sexual morality, so fundamental to Catholic theological thought, seems to make little if any impression on Protestants. Per-

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haps this is due not merely to the metaphysical character of the considerations involved, but also to the fact that Protestant conceptions of original sin and the fall of man tend to make them averse to finding the moral law and the will of God in the natural operations of an essentially corrupted human nature.

2



Catholic Personalists and the Ends of Marriage

DURING THE LAST thirty years Catholic theologians have written a great deal about the personalist values in Christian marriage. A few of these writers espoused a conception of marriage, of its relation to its ends, and of the ends to one another, which exhibits certain similarities to the Protestant views we have just outlined. They did not, of course, as a result of their speculations, come to the conclusion that contraception is ever justified. But in attempting to re-emphasize the personalist values and give them the place they deserve in the philosophical, canonical, theological and ascetical tradition of Christian marriage they sometimes challenged the traditional terminology according to which procreation and rearing of children are called the primary ends of marriage, and questioned the teaching itself that the secondary ends of marriage are essentially subordinated to the primary ends.

It would be a mistake to imagine that these writers set out

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to attack the Christian doctrine of marriage. Their intent was just the opposite. They were in search of a theoretical explanation which would strengthen Christian marriage by recognizing the importance which these personalist values have in themselves, and especially, perhaps, in the minds of modern men and women. They were convinced, as many thinkers still are, that these values have not received in moral treatises and juridical literature the attention which they deserve. But in their eagerness to emphasize these values, a few writers, for example Doms and Krempel, over-emphasized them, thus evoking ecclesiastical animadversions.

By the personalist values in marriage are meant those factors which bring personal mutual fulfillment, personal mutual satisfaction, personal mutual perfection to husband and wife. Some of these values are referred to in a much quoted passage of the encyclical *Casti Connubii*:

This mutual interior formation of the partners, this earnest desire of perfecting one another, can be said in a certain very true sense, as the Roman Catechism teaches, to be the primary cause and reason of marriage—if only marriage is taken not strictly as an institution for the proper procreation and rearing of children, but in a broader sense as a sharing, a community, a union of their whole life.¹

The personalist factors referred to by modern writers are principally the conjugal love of the partners and the fulfillment of that love. This fulfillment is achieved not merely on the sexual level, in the mutual self-giving of the marriage act lovingly performed, but most of all in the wider sphere of life-companionship, or life-partnership, which is a permanent sharing of each other's lives in all the acts of conjugal life and love.

¹ AAS, 22 (1930), 539-592 at 548.

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These ideas [1] life-partnership, [2] conjugal love, and [3] sexual fulfillment, correspond remarkably with the secondary ends of the marriage act (and of marriage) as enumerated for us by Pius XI in the encyclical *Casti Connubii*:

For both in matrimony itself and in the use of the conjugal right there are secondary ends, such as [1] mutual help, [2] the fostering of mutual love, and [3] the quieting of concupiscence, which the spouses are by no means forbidden to intend, provided always the intrinsic nature of that act is preserved, and accordingly its proper relation to the primary end.²

It is fair to say, then, that the problem of the personalist values and the problem of the secondary ends of marriage to a large extent coincide. The secondary ends are substantially the personalist values or personalist ends. It is the undue exaltation of these ends, and the attribution to them of a degree of independence which they do not actually possess, which cannot be reconciled with the essentially subordinate position they hold in the Catholic doctrine of marriage.

DIETRICH VON HILDEBRAND

Dietrich von Hildebrand's book, *Marriage*, first published in German in 1929, was a forerunner of much of the Catholic literature on marriage which in succeeding years emphasized the personalist values in marriage and reacted against a too exclusive insistence on procreation as its primary end.³

² *Ibid.*, at p. 561.

³ *Marriage*, Longmans Green, London, New York, and Toronto, 1942, a translation of *Die Ehe*, Kösel-Pustet, Munich, 1929. See also, by the same author: *In Defence of Purity*, Sheed and Ward, London, 1931, pp. 16-27 etc., a translation of *Reinheit und Jungfräulichkeit*, Kösel-Pustet, Munich, 1927. Dr. von Hildebrand, *In Defence of Purity*, p. 5, also refers to earlier writings of his: *Die Idee der sittlichen Handlung*, in III, *Jahrbücher für Philosophie und phenomenologische Forschung* (edited by Edmund Husserl), Halle, 1916; also: *Sittlichkeit und ethische Verkenntnis*, Halle, 1921.

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He begins by distinguishing the primary meaning of marriage, which is conjugal love, from the primary purpose, which is procreation. The distinction between meaning and purpose is much the same as that developed by Doms six years later; Doms, however, finds the primary meaning not in love but in two-in-onenesship.

By the primary meaning of a thing von Hildebrand, like Doms, seems to understand the essential significance, or the essence, or some essential constituent:

We shall examine the essence and meaning of marriage in the realm of nature. . . . Mutual love is in a specific way the theme, that is to say, the core of the relationship (p. 2). . . . In marriage . . . the center and core is love. No other earthly community is constituted so exclusively in its very substance by mutual love (p. 3). . . . In marriage the fundamental subjective attitude and the objective *raison d'être* of the relationship, a relationship which also mysteriously serves to procreate new human beings, is mutual love. . . . Love is the primary meaning of marriage, just as the birth of new human beings is its primary end (p. 4). . . . Love is—as we saw before—the essence of the relation (p. 60).

Dr. von Hildebrand then goes on to describe the nature of this conjugal love. It is not distinguished from other loves merely by its connection with the sexual sphere. It consists in a unique and complete surrender of one person to the other, a complete giving of self. "Not only the heart but the entire personality is given up to the other" (p. 5). The most characteristic note of this self-surrender is its exclusiveness (pp. 16, 47, 48, 49). However, conjugal love, in the

In "Marriage and Overpopulation," *Thought*, 36 (Spring 1961), 81-100, Dr. von Hildebrand reiterates his distinction between primary purpose and primary meaning, and asserts that procreation is the primary purpose.

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ideal and exalted concept proposed, is not something essentially under the control of the partners. Although they have a duty to foster and cherish it, "this love can arise quite suddenly, and even develop to maturity at the first encounter of two persons" (p. 8). "Conjugal love reveals to us intuitively the whole being of the other in a mysterious, lucid unity" (p. 9). He says of marriage: "Unlike conjugal love it does not spring into being of itself, but it is a free act like an act of the will in the more strict sense of the term" (p. 19).

It would seem, therefore, that this conjugal love, which is the essence of marriage, has certain *essential* elements, instinctive and emotional, which are beyond the control of the will. For the author shows not only that conjugal love is not always found in marriage (p. 31), but that it is not always possible to two persons joined in marriage, or capable of joining in marriage (pp. 30, 54). He is careful, however, to distinguish conjugal love from the juridical bond of marriage, which once contracted is beyond the will of the partners and independent of the presence or absence of love (p. 18).

In later chapters we will comment (1) on the distinction between meaning and purpose as applied to marriage; and (2) on the sense in which conjugal love is essential to marriage.* At this point we merely call attention to the seeming inconsistency of asserting that conjugal love is the essence of marriage while giving it an essential definition according to which it must be absent from many marriages and impossible of realization in others.

HERBERT DOMS

Among personalist writers the one who made the greatest

* See Chapter 3, p. 52 f.; Chapter 6, p. 116 f.

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impression on other Catholic thinkers, and probably on Protestants, too, was undoubtedly Dr. Herbert Doms, Privat-Dozent of the University of Breslau, a priest, and doctor of theology. His book *Vom Sinn und Zweck der Ehe*, first published in German in 1935, had its second French edition in 1937, and appeared in English in 1939 under the title: *The Meaning of Marriage*.⁵ The importance of the book was vouched for by the amount of comment it evoked. It is a work which requires, but repays, careful study. We shall attempt a brief summary of that part of Dr. Dom's book in which he gives a "systematic exposition" of the meaning of marriage and its relation to the ends of marriage. This is his central theory, though the book contains much else besides.

Dr. Doms distinguishes between the meaning (*Sinn*, *sens*) of a thing and its purpose or end (*Zweck*, *fin*). By the meaning he seems to understand the ontological content, or inherent value, which is present merely because the thing exists, and independently of the remoter purposes for which the thing may exist. Perhaps Dr. Doms does not understand by the meaning of marriage exactly what we would under-

⁵ Herbert Doms, *Vom Sinn und Zweck der Ehe* (Breslau: Ostdeutsche Verlagsanstalt, 1935); *Du Sens et de la fin du mariage* (Paris: Desclée, de Brouwer, 2nd ed., 1937); *The Meaning of Marriage* (New York: Sheed and Ward, 1939). For bibliography on this controversy, see John C. Ford, S.J., "Marriage: Its Meaning and Purposes," *Theological Studies*, 3 (1942) 333-374 at 333, note 1; and Bernardin Krempel, C.P., *Die Zweckfrage der Ehe in neuer Beleuchtung* (Zürich and Köln: Verlagsanstalt Benziger, 1941), p. 16, note. Book reviews of Doms' work: P. Wilms, O.P., in *Divus Thomas*, 16 (1938), 252-255; Charles Bruhl, in *Homiletic and Pastoral Review*, 43 (1942), 188; J. Graneris, in *Apollinaris*, 12 (1939), 536-538. See also: Bernard F. Lonergan, S.J., "Finality, Love, Marriage," *Theological Studies*, 4 (1943), 477-510; Antonius Lanza, *De Fine Primario Matrimonii* (Rome: 1941, excerptum ex *Apollinaris* vols. 13 and 14, 1940 and 1941); Norbert Rocholl, *Die Ehe als geweihtes Leben* (Dülmen in Westfalen: Laumann, 1939); *idem*, *Die personale Würde der Frau* (Paderborn: Bonifatius Drukerei, 1940); P. Abellan, S.J., *El fin y la significacion sacramental del matrimonio* (Granada: Colegio de la Compania de Jesus, 1939). For references to works published after the Holy Office decree of April 1, 1944, see note 12 below.

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stand by its essence. It seems, however, that it is something like the "internal constitution" or "essence" that he is looking for when he seeks to define what he calls the meaning of marriage.

It is the thesis of Dr. Doms that marriage (likewise the marriage act) has a meaning, or inherent value, which is present independently of the purposes to which marriage is naturally orientated. These purposes (procreation, mutual help, and the remedy for concupiscence) need not be brought into the picture in order to know what the primary meaning of marriage is. "Marriage 'is' first of all, in itself a reality of profound meaning before being 'for something else' which is not itself" (p. 109).⁶ This meaning is neither procreation nor the mutual help of the partners. These are both something over and above the inherent meaning of marriage (and of the marriage act).

What is this inherent meaning? It is the "two-in-oneship" or community of life of the spouses (*Zweieinigkeit*, *l'unité à deux*). This meaning is not, as some have believed, love: "It is rather the community of life itself of two persons who make but one person, a community of life embracing the whole human being, from the spiritual sphere, through that of sense, and into the bodily . . ." (p. 107). Marriage, considered as the two-in-oneship of the spouses "is not constituted by their mutual ordination to an end outside themselves to be obtained by their union [e.g. procreation, or mutual help] . . . but rather by the living and perpetual ordination of a man and woman to one another until they are one" (p. 107).

This two-in-oneship of the spouses exists as soon as marriage is celebrated, but it is not perfected or "realized" or "consummated" until the marriage act takes place. Dr.

⁶ The page references are to the second French edition of Doms' work.

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Doms refers to the marriage act as the specific *actus secundus* of marriage. In this act the partners really become one, and thus make real and actual for themselves their marital two-in-oneness or community life.

What, then, is the inherent meaning or value of the marriage act? It is this consummation or realization of two-in-oneness. Its primary meaning is the making a complete reality of the partners' common life, and it has this meaning independently of the further orientation which the act naturally has to procreation. Dr. Doms also refers to this inherent meaning of the act as its proximate objective purpose, as distinguished from the remote ends, procreation and mutual help.

In the conjugal act the unseen ontological unity of the spouses is realized by the fact that each one is immediately and totally fulfilled by the *actus secundus* of the other. . . . Accordingly, then, the exercise of the living act of two-in-oneness contains in itself an immanent meaning which is in some sense an end unto itself. The meaning immanent in the living act of two-in-oneness is always objectively realized in every conjugal act which is performed normally, whereas the two ends resulting from it are not always attained (p. 106).⁷

Dr. Doms does not deny, of course, that procreation and mutual help are ends of marriage and of the marriage act:

The conjugal act has a proximate objective purpose: the realization through bodily union of the two-in-oneness of the

⁷ Compare what Doms has here with regard to the realization of two-in-oneness in every normal act of married intercourse with what Anglican theologians are now saying about *henosis*, the one-flesh union of the spouses, which is realized even in contraceptive intercourse. Cf. Derrick Sherwin Bailey, *The Mystery of Love and Marriage*, p. 98 ff.; Hugh C. Warner, "Theological Issues of Contraception," *Theology*, 57 (1954), 8-14 at 11; *The Family in Contemporary Society* (London: S.P.C.K., 1958), Appendix I, p. 120 ff.

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spouses in the real order. Therein we find a profound meaning. The completing of this two-in-oneness is orientated naturally to two remote ends, one of which is on the personal level, the other on the biological level. The personal end is the fulfillment of the spouses as persons on the various planes of their being [mutual help]. The ultimate biological end is procreation (p. 105).

But the sense in which procreation is an end is quite different even from the sense in which mutual help is an end; for

if we are going to make the concept of end mean anything here, we must recognize that there is question, actually, of a natural realization and achievement effected on two different planes which are subordinated to one another in a very minor degree.

In the order of biological phenomena procreation of offspring is the purpose of marriage and the marriage act just as in a tree the fruit is the purpose of the flower. . . . The end in this biological sense is an entirely different thing from the end of human actions and institutions. It merely designates the tendency of a natural, necessary phenomenon (pp. 106, 107).

But although Dr. Doms recognizes these ends of marriage, he denies that marriage is primarily constituted by the mutual ordination of the partners to them. It is constituted rather "by the living and perpetual ordination of a man and a woman to one another until they become one" (p. 107). Hence "it would be better for the future to give up the terms primary and secondary ends and to speak in a purely realistic and descriptive manner, of the personal ends inherent in marriage, and of procreation, distinguishing both of these from the meaning of marriage" (p. 108). Furthermore:

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. . . there is no longer sufficient reason to call procreation the primary end in the sense intended by St. Thomas, nor to oppose the other ends to it as secondary. Since the child represents for the spouses themselves a supremely important means of natural and supernatural perfection, we are able, supported by the encyclical *Casti Connubii*, to designate as the principal and primary purpose, not the child but the mutual formation and perfection of the partners in the natural ontological order and above all in the supernatural order (p. 108).

This summary is too brief to do full justice to Dr. Doms. But in it one can find the principal points of his theory. The points we shall later single out for criticism are these: (1) that marriage has an inherent meaning which is really distinct from its purposes; (2) that procreation should not be called the primary end of marriage; (3) that the encyclical *Casti Connubii* supports these views.⁸

BERNHARDIN KREMPPEL

The work of Dr. Bernhardin Krempel, C.P.: *Die Zweckfrage der Ehe in Neuer Beleuchtung*, published in Switzerland in 1941, sought to throw new light on the vexed question of the purpose of marriage.⁹ His point of departure was the sentence from *Casti Connubii* quoted above: "This mutual, interior formation of the partners . . ." etc. He considered his work to be, as it were, a commentary on this famous passage.

He rejected procreation as the primary end of marriage, or even as an essential end in the philosophical sense at all.

⁸ (1) See Chapter 3, p 52 f. (2) See Chapter 7, p. 127 f. (3) See Chapter 7, p. 138 f.

⁹ Bernhardin Krempel, C.P., *Die Zweckfrage der Ehe in neuer Beleuchtung* (Zürich and Köln: Verlagsanstalt Benziger, 1941). Cf. Hieronymus Wilms, O.P., review of Krempel, in *Divus Thomas*, 20 (1942), 92-97.

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Canon 1013 § 1 uses the word *finis* in a practical, pastoral context. What the canon calls the primary end of marriage would more properly be described as an effect, or result. The plurality of the ends is also rejected. Philosophically there cannot be several ends of marriage. Marriage, like any other being, can have only one essential, specifying end. This end, he eventually concludes, is the perpetual union of lives of two persons who are, and inasmuch as they are, of opposite sex.

But before arriving at this conclusion he probes deeply into the nature of marriage and of sexuality. In this work, for the first time, he tells us, both marriage and sexuality are scrutinized and synthesized in the light of the Aristotelian-Thomistic theory of relation. His method is an unwavering application of the metaphysics of relation to the problems of the purpose of marriage and the purpose of sexuality.

Marriage is in the category of relation. The relation is one of mutual possession. The possession is not merely of one another's sexual faculties but of one another's entire person as sexually differentiated. He examines in detail the nature of this relation, its subject, foundation, term, etc. Since the term of the relation is the entire person of the partner, he rejects a narrow conception of *jus in corpus* in favor of a *jus in personam*, that is, the entire person of the partner as sexually differentiated.

Thereafter he turns to human sexuality. With inexorable singlemindedness he makes use of St. Thomas' doctrine of relation to plumb the philosophical depths of the meaning of sexual diversification in human nature. Rejecting certain other theories, he concludes that the two sexes, fundamentally, are *relationes mixtae*. His essential definition of sex: Sex is the accidentally diverse representation of specific human nature in an individual human nature, inasmuch as

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the masculine sex exhibits the essential elements of human nature as diverse, while the feminine sex exhibits these elements as a unity.

Dr. Krempel's conception of "the perpetual union of lives" as the unique specifying purpose of marriage, seems closely akin to Dr. Doms' two-in-onenesship as the inherent meaning of marriage, though they approached the problem from very different philosophical backgrounds. Be that as it may, his work, if successful, would have provided a philosophical basis for certain personalist views of marriage. While his study of marriage as a relation throws light on some aspects of matrimonial theology, and while his theory of human sexuality deserves further exploration, we will have occasion to disagree, in later chapters, with the following points of his synthesis: (1) That marriage can have only one essential end; (2) That union of lives is the only essential end of marriage; (3) That procreation and rearing of children is not the primary end of marriage.¹⁰

We have given this brief indication of the theories of these three authors because they seem to us to be among the more typical, the more influential, and in some respects the more extreme of the personalist writers. But there were many other writers, prior to the condemnation of April 1, 1944, especially in Europe, who emphasized the personalist side of marriage, and like the authors just quoted made valuable contributions to the theology of marriage. Some of them, however, overemphasized the personalist ends to the extent of provoking a not unexpected reaction of the Roman authorities. A decree of the Holy Office, dated April 1, 1944, is as follows:

In the last few years a number of published writings concern-

¹⁰ (1) See Chapter 3, p. 52. (2) See Chapters 5, 6 and 7, *passim*. (3) See Chapter 7, p. 127 f., and p. 138 f.

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ing the ends of marriage and their relation and order have appeared, which assert either that the primary end of marriage is not the generation of children, or that the secondary ends are not subordinate to, but are independent of, the primary end.

In these discussions the primary end of marriage is variously designated; for example it is said that it consists in the complement and personal perfection of the spouses by a complete communion of life and action; in their mutual love and union, to be advanced and perfected through the psychical and corporal surrender of their persons; and various things of that sort.

Sometimes in these writings a meaning is attached to words which occur in the teachings of the Church (for example, *end*, *primary*, *secondary*), which is not appropriate to these words according to their common use among theologians.

This new departure in thought and speech is liable to occasion errors and uncertainties; and in order to avert such consequences the Eminent and Most Reverend Fathers of this Supreme Sacred Congregation, which is in charge of safeguarding matters of faith and morals, in the plenary session of Wednesday the 29th of March, 1944, considered the question proposed to it as follows:

Question. Whether the opinion of certain modern writers can be admitted, who either deny that the primary end of marriage is the generation and education of children, or teach that the secondary ends are not essentially subordinate to the primary end, but are equally principal and independent.

Reply. In the negative.

And in the audience granted to His Excellency, the Most Reverend Assessor of the Holy Office, on Thursday, the 30th of the same month and year, His Holiness Pius XII, after receiving a report of the entire matter, deigned to approve the present decree, and ordered that it be published.

Given at Rome, from the Palace of the Holy Office, 1 April, 1944.¹¹

¹¹ AAS, 36 (1944),-103, translated in Bouscaren, *Canon Law Digest*,

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It is to be noted that the decree mentions no names; but undoubtedly Doms and Krempel were among the writers referred to. Still more important to note is that the decree did not condemn personalist writings in general, nor the efforts of these writers to explore and emphasize the place of personalist factors in marriage. The decree merely rejected an explanation of them which denied that procreation is the primary end or denied the essential subordination of the secondary ends, noting at the same time an unjustifiable departure in speech and thought from the common views of theologians. It is unfortunate that when an official act of this kind takes place there is a tendency to neglect and forget the valuable, positive contributions made by the writers in question to the theology of marriage. This is especially unfortunate in a case like the present one where some of these writings may still contribute to a solution of the problems raised. For the decree can by no means be understood as a complete solution of the problem of the relation of marriage to its ends. The amount of thought that has been devoted to the subject since the decree is evidence of that.¹² The

III, pp. 401-402, under canon 1013. Annotations on the decree in *Periodica*, 33 (1944), 219-228; cf. also R. Carpentier, "Les fins du mariage" (decree du 29 March 1944 [should be April 1st] in *Nouvelle Revue Théologique*, 77 (1944), 838-842; William Conway, "The Recent Papal Allocution: The Ends of Marriage," *Irish Theological Quarterly*, 19 (1952), 75-79.

¹² *Sententia S. R. Rotae*, 22 Jan. 1944, coram Wynen, *Decisiones S.R. Rotae*, Vol. 36, Decis. 6, pp. 55-79, nn. 11-30, AAS, 36 (1944), 179-200 at 185-193, nn. 11-30. This decision was given before the decree of April 1, 1944, but was first published, in AAS, on June 26, 1944. Pius XII, "Address to the Midwives," 29 Oct. 1951, AAS, 43 (1951), 835-854 at 848 ff. In this address, at p. 849, Pius XII refers to a previous declaration of his, dated March 10, 1944, in which he had treated the whole question of the hierarchy of the ends of marriage; but we have been unable, after making inquiries in Rome, to unearth this elusive document. Francis W. Carey, *The Purposes of Christian Marriage* (Washington: Catholic University of America Press, 1950), with bibliography. Claude Schahl, O.F.M., *La doctrine des fins du mariage dans la théologie scholastique* (Paris: Edition Franciscaines, 1948), with bibliography; reviewed by R. Ostiguy, O.M.I.,

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decree does not explain the essential meaning to be attached to the phrase "primary end," nor does it clarify the nature of that "essential subordination" of the secondary "personalist" ends. These points, in view of the teaching of modern popes and theologians as to the place of love and sexual union in marriage, need still further exploration and clarification. In other words, certain problems that underlay and inspired the work of the Catholic personalists still remain to be solved.

We have already indicated that it was not the problem of contraception, or a desire to justify it, that led Catholic

in *Revue de l'Université d'Ottawa*, 22 (1952), 252*, and by J. Fuchs, S.J., in *Scholastik*, 26 (1951), 578-580. Michael F. McAuliffe, *Catholic Moral Teaching on the Nature and Object of Conjugal Love* (Washington: Catholic University of America Press, 1954), with bibliography. Louis Lochet, "Les fins du mariage," *Nouvelle Revue Théologique*, 73 (1951), 449-465 and 561-568, distinguishing between the purpose of marriage as a society and as a community; digested in *Theology Digest*, 1 (1953), 21-26. V. Panzarsa, "Il fine primario del matrimonio," *Salesianum*, 8 (1946), 256-283, distinguishing between that mutual help which is a secondary end and the total mutual fulfillment which is just as primary as procreation. William Conway, "The Recent Papal Allocution: The Ends of Marriage," *Irish Theological Quarterly*, 19 (1952), 75-79. E. P. Ennis, S.J., "The Ends of Marriage," *Clergy Review*, 37 (1952), 270-281. B. Lavaud, O.P., "Pie XII, docteur du mariage," *Revue Thomiste*, 52 (1952), 119-141; and "Chronique," *ibid.*, 461-469. Angelo Perego, S.J., "Le nuove teorie sulla gerarchia dei fini matrimoniali," *La Civiltà Cattolica*, an. 110, vol. II (2 May 1959), 235-247; *idem*, "Discussione teoretica sulla gerarchia dei fini matrimoniali," *ibid.*, vol. IV (17 Oct. 1959), 138-152. Enrico Di Robilant, "Il fine e l'essenza del matrimonio in alcune recenti dottrine," *Il Dritto Ecclesiastico*, 62 (1951), 697-729, maintaining, surprisingly, that Krempel's position can still be defended not as *ius vigens* but as *ius candelendum*. Gertrude Reidlick, *Die hierarchische Struktur der Ehe* (Munich: Zink, 1953); (Dr. Reidlick, a female doctor of Canon Law, holds, according to Perego, *art. cit.*, p. 247, that woman is equal to man as a person but is essentially destined to his service; and that the essential object of consent is not the *translatio iuris in corpus* but the obligation to belong to one another as man and wife in such wise that the man becomes the head and the wife his helper). Dietrich von Hildebrand, "Marriage and Overpopulation," *Thought*, 36 (Spring 1961), 81-100. Léon-Joseph Suenens, *Love and Control* (Westminster, Md.: Newman Press, 1961), p. 88 ff. Ernst Michel's *Ehe, Eine Anthropologie der Geschlechtsgemeinschaft* (Stuttgart: Klett, 1948, 1950), was placed on the Index on Dec. 15, 1952, AAS, 44 (1952) p. 879, apparently because of its teaching on the ends of marriage.

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writers in modern times to attach new importance to the personalist ends. What were the problems, then?

Dr. von Hildebrand in the preface to the English translation of *Die Ehe*, gives us his explanation of one aspect of the matter:

Our epoch is characterized by a terrible anti-personalism, a progressive blindness toward the nature and dignity of the spiritual person. This anti-personalism expresses itself mainly in a radical collectivism and in the different kinds of materialism. Of these biological materialism is perhaps the most dangerous, for it considers man as a more highly developed animal, his whole personality determined by mere physiological elements. Human life is considered exclusively from a biological point of view and biological principles are the measure by which all human activities are judged.

In such an ideological situation, it seems very important to stress again the spiritual significance of marriage—and to explain not only the primary end of procreation, but its primary meaning as the intimate union of two persons in mutual love. . . . An understanding of this is beginning to grow in different countries, and moral theologians are emphasizing the role of love in marriage, a role which was previously underestimated by some. In stressing the primary end of marriage—procreation—certain theological treatises have overlooked the primary *meaning* of marriage, which is love.¹³

But today we find not merely a new emphasis on the unique, spiritual love of husband and wife. For hundreds of years there has been gradually emerging a clearer recognition of the positive values of human, sexual love. In the course of the Church's history there has been a long develop-

¹³ *Marriage*, (London, New York, Toronto: Longmans Green, 1942), pp. v, vi.

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ment of our teaching on the use of sex in marriage, and on the values inherent in sexual activity. Modern theologians now take pains to defend the inherent legitimacy of sexual activity and pleasure in the married state. They do not find its sole justification in the fact that it is a necessary means to the procreation of children. They are no longer accustomed to speak of sexual concupiscence in conjugal intimacy as something which needs special justification in the form of excusing causes. They give to sexual activity and pleasure a value of its own, at least to this extent, that the choice of it by married people in the marriage act can be a good and virtuous choice even when procreation is unlikely or impossible, or purposely excluded by legitimate means. And their views in this regard are amply confirmed in official Papal documents like *Casti Connubii* and the *Address to the Midwives*. This is one of the elements in the problem of determining with greater accuracy the meaning of "primary end" and "essential subordination" today.

As contributing factors to the modern evaluation of sexual union in marriage should be mentioned new physiological information about the nature of the reproductive process which has been accumulating for over one hundred years, and the discoveries of dynamic psychology, made during the last fifty or sixty years, as to the role of sex in human life.

Another problem is that of the sterile marriage. There are millions of such marriages, and they are true marriages. The achievement of the primary ends is impossible in these unions and yet, among Christians, they have all the essentials of Christian marriage. Whether the partners are beyond the childbearing age when the marriage is contracted, or whether they are still young but sterile for other causes, and

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even if they know it, the Church blesses their unions. It is inevitable that in these many marriages where the "biological and social" ends are unattainable, the personalist ends become of first importance to the partners.

Thus, no theoretical explanation of marriage, no theory of its relation to its ends and of the ends to one another, is acceptable unless it has room within its framework for these sterile marriages. Since the essence of marriage can be verified in marriages where the attainment of the primary ends is altogether impossible, and where only the so-called personalist factors are capable of actual achievement, it is not hard to understand how some theorists would be tempted to consider the personalist factors to be the primary and essential thing in marriage.

In addition, the recognition of the legitimacy of the systematic use of the sterile period to avoid conception inevitably led Catholic writers to consider or re-consider the positive values inherent in sexuality apart from procreation;—not apart from the inherent procreative teleology of the marriage act, but at least apart from the intention or the possibility of achieving procreative results. This problem, though not fundamentally different from the whole larger problem of the place of sexuality in sterile marriages and after the age of childbearing, had a greater impact on Catholic thought both because of its superficial resemblance to methods of contraception and because it opened up a legitimate avenue to greater reliance on human providence in planning and raising a family.

Finally the new attention to the personalist factors is undoubtedly a reaction against the juridical emphasis on the *ius in corpus* as the one, central thing in marriage, and against a too restricted interpretation of the meaning of *ius*

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in corpus. As explained in some canonical and moral treatises the *ius in corpus* seems to prescind from or even to exclude the personalist factors. It is disconcerting to read that the essence of marriage is *individua vitae consuetudo*, but then to learn that this *individua vitae consuetudo* is merely the *ius in corpus*, and apparently nothing else.¹⁴ Or to read that mutual help is an intrinsic, *finis operis*, belonging to marriage of its very nature, but then to discover that this aspect of marriage means so little that the complete, antecedent exclusion of all right to mutual help does not invalidate matrimonial consent.¹⁵

From the juridical point of view this emphasis on *ius in corpus* is perhaps difficult to avoid. One must not forget that the canon law of marriage has been considerably influenced by what happens in the legal tribunals of the Church. These tribunals, unfortunately, must busy themselves for the most part with matrimonial pathology. It is the broken marriages that reach the courts, and the courts are concerned chiefly with those externally provable factors which are decisive in determining the validity or invalidity of marriages and the legal rights of the parties. Consequently, an exclusively canonical viewpoint (even though marriage is essentially a being of the juridical order) is likely to be incomplete and one-sided, and tends to depreciate the other essential, but less tangible, elements of Christian marriage.

All these reasons combine to explain why it is that modern writers are still in search of a theoretical explanation of the ends of marriage which gives to the personalist factors the importance and dignity which they deserve as essential

¹⁴ E.g., Cappello, *De Matrimonio* (Rome: Marietti, 1961), nn. 6, 7.

¹⁵ *Sententia S. R. Rotae*, 22 Jan. 1944, coram Wynen, *Decisiones S. R. Rotae*, vol. 36, Decis. 6, pp. 55-79 at pp. 70, 66, nn. 30 and 24; *AAS*, 36 (1944), 179-200 at 192 and 189, nn. 30 and 24.

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components of Christian marriage. The true and central problem is not whether they exist or whether they have a place in the framework of marriage. They have always been accorded a place. The problem is to find them an *essential* place in marriage while at the same time keeping them in an *essentially subordinate* place.

3



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IN DEVELOPING OUR own theoretical explanation of the relation of marriage to its ends and of the ends to one another we will not be directly concerned with the discussion or refutation of Protestant views, though we hope to throw some light on them. Our interest is primarily that of finding a middle ground between the two extremes amongst Catholic writers, of exaggerated personalism on the one hand and juridical impersonalism on the other.

We are convinced that if the traditional theory of marriage and its ends is properly understood and explained there is ample room within its framework to preserve and harmonize all those personalist values so ardently defended in recent times. There is no need to go outside that framework, to invoke a distinction between meaning and purpose, to desert well-established terminological proprieties, or to give up basic positions, in order to make intelligible those values with which modern writers are chiefly concerned. We believe that all the good things they emphasize and which they describe so eloquently, such as the community of life of the

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spouses, their life-partnership, the perfection of their conjugal love both spiritual and sexual, and their mutual, supernatural formation, can be adequately explained within the traditional framework. But we do not think such an explanation is possible unless the essential object of matrimonial consent is given a broader meaning than some canonists and moralists have given it in the recent past.

We take our departure from an incisive statement of the problem made by Pius XII in an address to the Judges of the Rota in 1941. In connection with the difficulties the court has experienced in judging the question of bodily incapacity for marriage, the Pope outlined the central problem as follows:

In this matter, which is both delicate and difficult, there are two tendencies to be avoided: first the one which, in examining the constituent elements of the act of generation, considers only the primary end of marriage, as though the secondary end did not exist, or were not the *finis operis* established by the Creator of nature himself; and secondly the one which gives the secondary end a place of equal principality, detaching it from its essential subordination to the primary end—a view which would lead by logical necessity to deplorable consequences. In other words, the truth is intermediate, and two extremes must be avoided: on the one hand, practically to deny or esteem too little the secondary end of marriage and of the act of generation; on the other hand, to dissociate or separate unduly the conjugal act from the primary end, to which according to its entire internal structure it is primarily and principally ordained.¹

The theme we wish to develop and illustrate, then, comprises both these points, first, that the secondary or personalist ends are essential, and second, that they are essen-

¹ Allocution to Roman Rota, AAS, 33 (1941), 421–426 at 423.

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tially subordinate to the primary ends. In the following outline the steps of this development are summarized.

OUTLINE AND SUMMARY

The present chapter is devoted principally to a discussion of certain preliminary concepts concerning the essential bond, the essential ends and the essential meaning of marriage.

All admit and we can take it for granted that the values embodied in the primary ends, the procreation and rearing of children, are in some sense essential to marriage. But all likewise agree that the actual realization of these ends is not essential, seeing that a marriage which fails to accomplish them is still a marriage.

Furthermore it cannot be maintained that the unimpeded, proximate right to procreative acts (*ius in corpus proximum vel expeditum*) is essential to marriage either. For this proximate right is often absent, too, while marriage itself endures. Consequently we agree with those theologians and canonists who hold that a distinction between the proximate and the fundamental right is necessary. The thing that is essential to marriage is the fundamental right to acts by which the primary ends are achieved. It is this right, we say, which is the essential bond, or union, or relation of marriage. It is the essence of marriage. (Chapters 3 and 4)

But we go farther, and this is the heart of the matter. We do not believe that the essence of marriage, the fundamental right, embraces merely the acts by which the primary ends are achieved. We believe it is a right to the acts by which the secondary ends are achieved also. The secondary, or personalist ends are, as Pius XII has stated on more than one occasion, intrinsic *fines operis* of marriage. They are therefore essential ends. Our explanation of that essentiality will

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be that the essence of marriage, the fundamental marriage right, includes a right not only to procreative and educative acts, but also to the acts of mutual help (life partnership), the remedy for concupiscence (sexual fulfillment), and conjugal love. This is our explanation of the position that the secondary ends are essential. (Chapters 5 and 6)

Only after this is established do we go on to explain the essential subordination of these ends, and correlatively, the essential superordination of the primary ends. The meaning of "primary" in the modern theology of the ends of marriage has not yet been satisfactorily explained. We will point out some meanings it certainly cannot have today; some meanings it does have; and then discuss certain points that remain obscure. (Chapter 7)

Finally we explore the concept of marriage as a Christian vocation, and find in that concept an acceptable interpretation of the famous statement of Pius XI that in a certain sense the mutual interior perfection of the partners is the "primary cause and reason of marriage." (Chapter 8)

To give a theoretical explanation of Christian marriage which does justice to all its complex elements would be an extremely difficult task and one we do not intend to essay. For marriage has essential ends, essential properties, essential benefits (*bona*). Its essence is variously described as the bond, the right, the union, the relation of marriage. It is a natural law contract, an ecclesiastical contract, a civil contract and a social institution. It is a sacrament of the New Law. It is a divine institution and the supernatural vocation to which God has called the great majority of men and women. These elements, philosophical, sociological, canonical and theological, so diverse, so many-faceted, have always taxed the ingenuity of those who attempt to make a unified conceptual framework to contain them. We intend to ex-

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plore in Part I of this volume only one section of this vast field, the relation of marriage to its ends and of the ends to one another, but even with this limited scope we appreciate the words of St. Augustine:

Although I have occupied myself with these matters and gone into them to the best of my ability, yet I am well aware that the question of marriage is extremely obscure and involved. Nor do I dare to claim that in this work or in any other I have yet explained all its complications, or that I could explain them now if pressed to do so.²

Since we will be speaking frequently of the essential bond of marriage, the essential ends of marriage and the essential meaning of marriage, it is necessary to give some preliminary explanation of these fundamental concepts in order to clear the ground.

THE ESSENTIAL BOND OF MARRIAGE

The object of matrimonial consent is the whole of marriage. The essential object of consent is the essence of marriage. The consent, *matrimonium in fieri*, makes the marriage, *matrimonium in facto esse*. Consent consists essentially merely in saying yes to the essence of marriage.³ When a man and woman give their consent at the celebration of marriage they are consenting, obviously, to be man and wife. We intend to investigate whether this husband-wife relationship, or bond, or union, implied by the terms husband and wife, consists essentially in a mutual right and obligation merely to sexual intercourse, or essentially in

² *De Conjugiis Adulterinis*, lib. 1, cap. 25, n. 32 (PL 40-469); and see *De Bono Viduitatis*, lib. unic., cap. 15, n. 19 (PL 40-442).

³ St. Thomas, *Suppl.* q. 48, art. 1, corp.; "Consensus qui matrimonium facit est consensus in matrimonium . . ."

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something more than that. Since the personalist ends are essential *fines operis* we will maintain that they are also included in the essence of marriage in *facto esse* and therefore in the essential object of consent.

We use "essence" in the logical sense and mean by the essence of marriage all those things and only those things without which a true marriage cannot exist.⁴ We are not speaking in the metaphysical sense according to which, e.g., natural physical beings are defined by genus and specific difference.

The essence of marriage endures as long as the parties continue to be man and wife. An extreme example will illustrate this. Let us suppose a case of a marriage which has broken up. The parties are hopelessly alienated and are permanently separated, perhaps by a decree of the ecclesiastical court. The wife no longer has the right to live with her husband. He no longer has the right to live with her. If he forces marital relations on her he will be guilty of injustice. Are they still married? Is the essence of marriage still present in such a union? The answer must be an unequivocal affirmative, according to our theological and canonical principles. And although it is a mistake to make the abnormal the norm of the normal, it always remains true that the essence of a thing remains the same both in normal and abnormal examples of that thing—if the word essence

⁴ This is the sense in which canonists speak of invalidating conditions "against the substance"—i.e. against the essence of marriage. It is possible to speak consistently and pragmatically of the essence of marriage in this sense because centuries of canonical jurisprudence have established norms for determining the invalidity of those marriages in which the partners have attempted to introduce something "against the substance" into their consent. When we conclude that the fundamental right to acts by which the secondary ends are realized is "essential to marriage" we mean the same thing that canonists mean when they say that the "*ius in corpus in ordine ad actus per se aptos ad generationem*" is essential to marriage.

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means anything, if there is any such thing as an essence of marriage. The essence of marriage, therefore, embraces only those minimal essentials which are present in every true marriage, no matter how abnormal, and without which no marriage, no matter how superficially normal, can exist. In the example given, as in every other case, it is the essential bond of marriage which still exists even when all else is taken away. Because the bond of marriage still binds them they are still husband and wife, not merely in name but in truth.

With regard to this marriage bond, theologians for hundreds of years have exhibited remarkable unanimity in asserting the following propositions or their equivalents. They say first, that the essence of marriage is the bond, *vinculum*; secondly, that the essence of marriage is the marriage union, *conjunctio*; thirdly, that the essence of marriage is the fundamental marriage right, *ius in corpus*; and fourthly, that the essence of marriage is the marriage relation, *relatio*. We refer to a lengthy, representative list of authorities to this effect.⁵ Not that all these authors say explicitly that the essence of marriage is all four of these things. But these four points can be said to be at least implicit in the teaching of all of them. These four points all amount to the same thing. They are four different ways of speaking about the same reality. The four ideas, in other words, in reality coincide. Payen sums up the common teaching when he gives this fourfold definition of marriage:

It is (1) the exclusive and perpetual union for the procreation of children; (2) the matrimonial bond; (3) the exclusive

⁵ See John C. Ford, S.J., "Marriage: Its Meaning and Purposes," *Theological Studies*, 3 (1942), 333-374 at 341, note 4.

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and perpetual right, considered radically, to conjugal acts; (4) a mutual and real relation.⁶

And he adds that "rightly understood, that is, taken for the essence of marriage *in facto esse*, these four definitions come to the same thing."

Merkelbach, in defending the following thesis, reflects not only the teaching of St. Thomas but the general consensus:

Marriage *in facto esse* consists essentially in a formal nexus or bond, of itself permanent, of the moral order, which arises from the contract, or in a relation of union by which the spouses are united and bound to each other and by which they formally become spouses, or husband and wife; and from this there results further the mutual right of exacting as well as the mutual obligation of maintaining fidelity and of fulfilling the offices of marriage.⁷ [*Italics added*]

It is readily understood that the ideas "marriage bond" and "marriage union" coincide. Marriage is a permanent society (Canon 1082 § 1). A society is a union of intelligent beings aiming at a common good or goal. The formal element in any society is the moral bond that unites the mem-

⁶ G. Payen, *De Matrimonio in Missionibus* (Zi-Ka-Wei: T'ou-sé-wé 1936), I, n. 70 f.

⁷ Benedictus Merkelbach, O.P., *Summa Theologiae Moralis* (Bruges: Desclée de Brouwer, 1956, ed. 10a), III, n. 776. We agree with Merkelbach who maintains that the essence of marriage does not consist "in the mutual right to intercourse" [understand *ius proximum*], because the right to intercourse "can disappear while the marriage remains." We also agree with his statement that many modern manuals speak inaccurately when they say the essence of conjugal life consists in a mutual right and obligation "unless by obligation is understood the bond by which they are obligated to each other, in other words the radical obligation or *ligamen*; which seems to be the sense in which St. Thomas speaks [Suppl.] q. 21, a. 1 and q. 42, a. 1, ad 5." *Ibid.* n. 777, 8°.

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bers. This bond consists of the mutual rights and duties of the parties with a view to the common goal. Accordingly, to say that the marriage bond is the marriage union is merely to assert that the matrimonial society has as its formal element a permanent moral principle of union—which can be called the bond or the union indifferently.

Likewise the ideas marriage bond and marriage right coincide, if by right we mean the fundamental right. For as we have just seen, the permanent moral principle which is the formal element, or bond, of a natural society consists in the rights and duties of the members. St. Bonaventure tells us that the union which is marriage essentially is not the affection of the spirit or the contact of the bodies of the partners but “a certain obligatory bond,” *vinculum obligatorium*, which endures whether or not the partners are separated in body or in heart.⁸ It is this fundamental *ius in corpus* which the authors identify with the bond and with the union. In the next chapter we will explain in detail the distinction between the fundamental *ius in corpus* and the proximate *ius in corpus*.

It is important to note here, that although we speak of *ius in corpus* in the singular, actually it comprises a group of rights and corresponding obligations. This is true even if *ius in corpus* is taken in the narrowest sense, as including only the right to the acts by which the primary ends of marriage are achieved. For the marriage bond even in this restricted sense includes essentially not only rights in the husband with corresponding obligations in the wife, but equally

⁸ St. Bonaventure, *In IV Sent.*, lib. 4, dist. 27, art. 1, q. 1: “Illa autem coniunctio quae respicit totum coniunctum et est matrimonium essentialiter non est affectio animorum, vel approximatio corporum sed quoddam vinculum obligatorium quod non perimitur sive affectu sive corpore separentur.” And compare St. Thomas, *Suppl.*, q. 45, art. 2, corp.: “Coniunctio matrimonialis fit ad modum obligationis in contractibus materialibus.”

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rights in the wife with corresponding obligations in the husband. We intend to show furthermore, that the essential bond includes rights and duties with regard to the acts of conjugal life and love by which all the essential ends of marriage are achieved. For the present it is enough to call attention to the fact that the *ius in corpus*, which is the marriage bond, is necessarily multiple, a group of rights and obligations, in every theory of the essence of marriage.⁹

Finally the ideas "marriage right" and "marriage relation" coincide, that is, they describe the same reality. It is not immediately evident in what sense this can be true; hence some further elucidation is necessary.

The familiar definition of a right, found frequently in philosophy manuals, describes it as an inviolable moral faculty or moral potency of doing something, claiming something, or possessing something. It is true that a right is a sort of faculty and no doubt that is a useful way of describing it. But when investigated more profoundly it will be seen that a right is more properly conceived as a *relationship* than as a *faculty*. DeLugo is the classical expositor of this conception.¹⁰ The following definition is based substantially on his teaching: *A right is a moral relation of preference by which a person prevails exclusively over a thing which is legitimately destined to his good or utility.* By a moral relation we understand a relation that exists in the moral (or juridical, or intentional) order of being. This relation, which is a right, though not existing in the physical order, is real. It has the same kind of reality that all juridical entities (laws, contracts, jurisdiction, societies, etc.) have. It is a real entity of the moral order.

⁹ De Smet, *De Sponsalibus et Matrimonio* (Brugis: Bayaert, 1927), n. 206.

¹⁰ DeLugo, *De Justitia et Jure* (Lugduni: 1642), disp. 1, sect. 1, n. 5.

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As the conclusion and *raison d'être* of this analysis of the notion of a right, it should be noted that the ideas "marriage right" and "marriage relation" really do coincide. It is easy to see how they coincide, and why theologians have called the essence of marriage both a right and a relation, once it is shown that a right fundamentally is a relation. And we believe the recognition of this coincidence is helpful towards a rapprochement between canonical views which emphasize the right as the essence of marriage, and theological views, especially the personalist, which emphasize the relation between the partners as essential. They are both essential because they are but different aspects of the same reality.

But this reality, marriage *in facto esse*, is not an entity of the physical order.

In speaking of marriage, scholastic writers, moralists and canonists frequently use the terms: the essence of marriage, the substance of marriage, the integrity as opposed to the essence, the essential properties, the *finis operis*, essential and accidental, etc. All this terminology is taken over from the ontology of physical being and applied to the institution of marriage. Yet this application can be only analogous, because marriage is not a physical entity.

Marriage is an entity of the moral order. The word "moral" here is not used, obviously, as the opposite of "immoral." It refers to an order of being which is contrasted with the physical and metaphysical orders. It refers to the really existing order of beings which are called juridical, or intentional or moral beings, in order to distinguish them from physical or merely metaphysical beings. Whatever the success with which metaphysicians may attempt to fathom the nature of such beings, our common sense tells us (supposing the spiritual nature of man, his spiritual intellect and will) that there are such things as jurisdiction, contracts,

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rights, societies, laws, etc.; that they really exist somehow, and that they are neither physical beings, nor metaphysical beings in the sense of speculative *entia rationis*. It would take us too far afield to analyze this concept further.¹¹ But the reality we call marriage is not, properly speaking, a substance at all, and does not have a substance. Ontologically it is a group of accidents. It exists in the moral order of being, not in the physical order.

Henceforth we can speak of the essence or substance of marriage realizing that this is analogical language used to describe a being of the moral order. We can speak of the marriage bond as the essence of marriage realizing that it is a bond consisting of rights and duties, and that it is this group of rights and duties which essentially constitutes the relationship of man and wife, which constitutes marriage itself. This is the bond which is brought into existence by the exchange of consent. This is the bond which is called marriage *in facto esse* by canonists and theologians alike. This is the fundamental marriage right (*ius in corpus*) the explanation of which is our principal concern.

THE ESSENTIAL ENDS OF MARRIAGE

The primary ends of marriage are procreation and rearing of children. We say "rearing" instead of education because in English the latter word seems to connote formal schooling. Rearing corresponds more closely with the comprehensive meaning which attaches to *educatio* in the Code of Canon Law and in official documents. The two primary ends taken together are well expressed by the word parenthood. But we use the plural, primary ends, rather than the singular, because procreation and rearing are distinct things.

¹¹ For a further analysis of this kind of reality see *Theological Studies*, 3 (1942), p. 344, with footnote 9.

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The concept of one does not include the concept of the other and they are in fact separable.

In enumerating the secondary ends of marriage we follow the terminology of Pius XI in *Casti Connubii* who lists them as mutual help, the remedy for concupiscence and the fostering of conjugal love.¹² Sometimes mutual help is called life in common, or the life-partnership of the spouses. The remedy for concupiscence is now beginning to be called, or at least partially explained as the sexual fulfillment of the partners, thus giving it a more positive content. Some writers call the secondary ends taken together "companionship," contrasting this with parenthood.

As goods to be achieved these are not five entirely distinct ends, although we separate them for purposes of analysis. They intertwine and overlap in many respects. For instance the same acts which bring about procreation of children are also part of the remedy for concupiscence. Not the least important element of mutual help is the fact that by it the partners form an adequate principle for the rearing of the children God may send them. The acts by which the child is reared are acts of mutual help. The sexual act, too, when lovingly performed, as the partners are bound to perform it, is not merely a procreative act, but also one of mutual help, of conjugal love and a remedy for concupiscence. The fostering of conjugal love is, as it were, a property of the acts of mutual help, and indeed of all conjugal acts, while the love of the parents for one another contributes in a special way to the rearing of the children. It is a mistake, therefore, to take the division into five ends too literally. The institution of marriage is aimed at all these ends together, and the acts by which they are achieved are inextricably bound up with one another and with the various ends. In a later chapter we

¹² *Casti Connubii*, AAS, 22 (1930), 539-592 at 561.

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will explain what it means to call parenthood primary, and the others secondary, that is, essentially subordinate to parenthood.¹³

Sometimes the primary ends are referred to by modern writers as the biological and social ends, while the secondary ends are called personalist. However, in contrasting personalist values with biological and social values one should not make the mistake of imagining that procreation and rearing of children are not personalist values, too, or that the so-called personalist values do not contribute to the biological and social ends. Procreation is not just a continuation of the race or the nation. It is inherently a continuation and fulfillment of the persons of husband and wife also. Parenthood may well be, and in fact frequently is, the highest of the personalist values in a given marriage which is *de facto* fruitful.

These five ends are called the essential ends of marriage. This does not mean that the actual realization of any of them is essential to any given marriage. A marriage which produces no children is still a marriage. A marriage which is never sexually consummated is a real marriage. Even a marriage in which there is no mutual help, no life in common, in which concupiscence is not remedied but reigns, where there is hatred instead of love, and complete separation both bodily and spiritually, remains a true marriage in the sense that the essence of marriage is still there; that is, the partners are still married, and in virtue of the essential marriage bond they are still bound to one another as husband and wife.

By an essential end we mean one which is intrinsic to the institution of marriage itself as one of its *finis operis*, and without which, therefore, marriage cannot exist. The Code

¹³ See Chapter 7.

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of Canon Law does not explicitly say that the ends of marriage are essential to it, but there can be no doubt about the common theological and canonical opinion on the point. No one, of course, would question that the primary ends of marriage are intrinsic, essential *finis operis* of the institution. As for the secondary ends, all are agreed, we believe, in describing them as *finis operis*. Pius XII has called them the "*finis operis* established by the Creator of nature himself."¹⁴ Monsignor Arthur Wynen, in the much publicized Rota decision of January 22, 1944, says (after giving mutual help a very broad and comprehensive definition): "The ordination and the corresponding right to mutual help belong to matrimony of its very nature and from the will of the Creator, and constitute its secondary *finis operis*."¹⁵ This is the same thing as saying that they are intrinsic and essential ends. At any rate we have not found objectors to the proposition that in the present order marriage cannot exist without being of its very nature objectively ordered to the secondary as well as to the primary ends. The partners in marrying may have any number of ends in view in making the contract. But marriage itself, the thing they consent to, cannot exist without being objectively ordered to procreation of children, rearing of children, mutual help, remedy for concupiscence and the fostering of mutual love.

Now what can it mean to say that the actual realization of the ends of marriage is not essential to marriage, and yet that all the ends are always essential to marriage?

If we look at the institution of marriage in general it is not hard to see how this is true. An end is a good to be produced or achieved. This institution we call marriage, accord-

¹⁴ Allocution to Roman Rota, AAS, 33 (1941), 421-426 at 423.

¹⁵ Sententia S.R. Rotae, Jan. 22, 1944, coram Wynen, *Decisiones S.R. Rotae*, vol. 36; Decis. 6, pp. 557-79 at p. 70 n. 30, 1°; AAS, 36 (1944) 179-200 at 192, n. 30, 1°.

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ing to the intent of nature and the intent of Almighty God, is aimed at producing or achieving all the ends, and does so in many cases. When in a particular marriage the ends fail to be realized this is accidental as far as the institution of marriage is concerned.

But our difficulty is not solved merely by looking at the institution of marriage. If all five ends are essential to marriage, then no individual marriage can exist without being objectively ordered to all the ends. Otherwise it would not be a marriage; something essential to it would be lacking. In what sense then can we say that procreation is the essential end of a marriage in which the partners are physically incapable of producing children? In what sense are mutual help and the fostering of conjugal love essential ends of a marriage in which the partners are separated and estranged from each other completely and forever? Are these marriages, are such marriage bonds, objectively ordered to ends both unattained and unattainable?

The answer we suggest is that in such cases, and in all cases, the marriage bond is ordered objectively to the ends of marriage simply because it is a *vinculum obligatorium*, to use the language of St. Thomas and St. Bonaventure. That is, it is a bond consisting of rights and duties. These rights and duties regard the acts by which the ends of marriage are realized. In a marriage in which one of the ends, or all of them are unattainable, it still remains true that the marriage bond is objectively related to that end, inasmuch as the marriage bond always consists in the right to the acts by which that end is attainable. The act may be impossible to perform for some reason, but it still remains true that the partners have the fundamental right to perform it, as will be explained in the following chapter.¹⁶

¹⁶ Pius XII, Address to the Midwives, AAS, 43 (1951), 835-854 at 849,

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Another difficulty is proposed by Bernhardin Krempel, C.P. How can marriage have more than one essential *finis operis*? Fr. Krempel contends that every natural being has and can have only one essential, specifying end.¹⁷ This may well be true of natural substances which constitute an *unum per se* in the physical order. But marriage is not a physical substance. It is a moral entity which is the product of the spiritual acts of spiritual human beings. It is not a species at all in the ontological sense. We see no intrinsic inconsistency in admitting that a natural society, especially so complex and unique a society as marriage, can be constituted by God and by nature for several ends, all of which are *fines operis*. All of these, since they are essential, are "specifying" to the extent that essence and species are correlative. In other words the "species" of marriage would not be present unless all these ends were present. But this is analogical language. In a later chapter we will see the sense in which the primary ends are more characteristic and more fundamental, and therefore can be properly called "specifying" in a sense which is not true of the secondary ends.¹⁸

THE ESSENTIAL MEANING OF MARRIAGE

This is the place to comment on the most fundamental proposition of Dr. Herbert Doms, namely: Marriage has an inherent meaning which is really distinct from its purpose.

A search for the inherent meaning of marriage, a search for its fundamental content and value, seems really to be

teaches that every marriage has as its primary end procreation and rearing of children, even if it is in fact sterile, "just as it can be said of every eye that it is destined and constructed for seeing, even if in abnormal cases, by reason of special conditions either internal or external, it will never be able to attain to visual perception." The Pope's point is that if it were not designed for seeing it would not be an eye at all. This is an important fundamental consideration in a philosophical argument against contraception.

¹⁷ *Op. cit.*, (supra, Chapter 2, note 9), Chapter 10.

¹⁸ See Chapter 7.

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nothing but an attempt to define its essence, that is, the minimum essentials which constitute it—though possibly this terminology would not be used by Dr. Doms, whose philosophical background does not seem to be scholastic.

We have seen that the essence of marriage is a bond of the moral or juridical order. But the common, juridical bond which unites the members of a society is unintelligible except in view of the purpose or purposes for which the society exists. In the case of marriage it does not make sense to speak of the inherent meaning of the essential bond unless one knows what are the rights and duties which constitute this bond. And on examination it will be found (we intend to show this) that these are precisely the rights and duties to perform the acts by which all the essential ends of marriage are to be achieved.

In other words, the essence of marriage is a moral bond. But what that moral bond is, what inherent value it has, what its *essential meaning* is, can only be discovered by looking at the essential ends of marriage. The ends of marriage are its essential meaning. Without them it is meaningless.

Now one may object that it is taking a very narrow view to identify the essence of marriage with the *juridical* bond that binds the partners to each other. Dr. Doms says:

The living content, the living reality of marriage is not identified with the exchange of consent, nor with the usual juridical consequences of the marriage contract, but is something much more living, to wit, human life itself, for which the juridical guarantees serve only as protection.¹⁹

But it is not true that marriage is a living reality in the literal sense. The only living things in marriage are the living

¹⁹ *Du Sens et de la fin du mariage* (Paris: Desclée et Brouwer, 1937, trans. 2nd ed.), p. 105.

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partners and their living acts—the acts of conjugal life and love. But the partners are not the marriage. Their acts are not the marriage. Marriage is something different from both. It is the juridical bond with its ends (and properties) created by the consent of the partners. That is the one thing in addition to the partners themselves that is found wherever marriage is found and without which marriage cannot exist. All the acts of conjugal life and love without exception can be absent while marriage itself remains.

All those acts by which the partners achieve procreation and rearing of children, remedy for concupiscence and their mutual help or life-partnership (two-in-oneness, if one prefers Dr. Doms' expression) are *conjugal only because they are performed by persons linked together by such a juridical bond*. Inasmuch as they are living acts of the physical order they could all be performed by unmarried persons, and often are. Their specific matrimonial character is determined by the fact that they are performed by persons bound together by the bond of marriage—by persons, therefore, who have the right and duty to perform them. Or, to consider them from the opposite angle, they are specifically conjugal because they are the only means by which the essential ends of marriage are actually realized. Accordingly the marriage bond has meaning only in so far as it is objectively ordered to these ends.

Dr. Doms says: "Marriage 'is' first of all, in itself, a reality of profound meaning before being 'for something else' which is not itself."²⁰ If this means that marriage is a reality

²⁰ *Ibid.*, p. 109. Much the same criticism which is made of Doms' distinction between two-in-oneness as the essential meaning of marriage and procreation as its end applies also to Dietrich von Hildebrand's distinction between spousal love as the primary meaning and procreation as the primary end. In a recent article, "Marriage and Overpopulation," *Thought*, 36 (Spring 1961), 81-100, he has further developed this position, distinguishing between instrumental finality and superabundant finality. But this ex-

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having a profound meaning independently of its ends, we do not see how the statement can stand. The ontological reality which is marriage, i.e. the juridical bond, has meaning only when one knows what the purposes are for which God created it, and towards which it is by nature objectively ordered. Look at the marriage bond independently of its ends. What is it? What is it worth? You cannot say. It is a group of mutual rights and obligations. It is only when you see what the objects of these rights and obligations are that marriage means anything. When you discover what these rights and obligations are to all the acts of conjugal life and love by which the essential ends of marriage are achieved, then you know the meaning of marriage and not before.

But all this has to do only with the essence of marriage, its basic, juridical framework. The "living realities of marriage" are by no means despised or neglected when we prescind from them in order to analyze the fundamental bond. Much less do we belittle marriage as a sacrament by trying to determine as accurately as possible what it is that Our Lord has raised to the dignity of a sacrament.

The living realities of marriage are the living, conjugal acts of the partners. These living acts do not make the marriage. They do make it a success, however; and their absence makes it a failure. Everybody without exception, including the moralist and the canonist, recognizes their supreme importance to the *bene esse* of marriage. Personalists emphasize the dynamic character of marriage, as something to be achieved, as a growth, as the living out of a loving conjugal life together. Canonists must not be blamed if they express the same idea in juridical language, calling marriage *in facto*

planation does not, in our opinion, give enough meaning to the term "primary" as applied to the procreative finality of marriage. His exposition seems rather to make procreation subordinate to spousal love and spousal union.

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esse an executory contract, i.e. one whose purposes are to be achieved by the carrying out of the promised acts of the contracting parties—acts which are never completed until death looses the bond.

One encounters at times in theological writers a disparagement of juridical language and even of juridical values. Uncomplimentary words like “legalism” and “legalistic” are used to dismiss basic, canonical positions, as if the canon law of marriage did not really matter, or had little if anything to do with the living truth of the matter. But in the Church a divorce between canonical and theological principles would be intolerable, especially in the case of marriage, which is a society, and therefore essentially an entity of the juridical order.

On the other hand, we find at times in canonical writing not merely a too exclusive insistence on the primary end, of which Pius XII complained when speaking to the Rota in 1941, but a conception of the marriage right so narrow that in our opinion the personalist reaction could only have been expected. With a view to broadening this conception and thus harmonizing what is really traditional in both the juridical and the personalist approaches to marriage, we wish to analyze still further the fundamental marriage right and marriage relation.

4



The Fundamental Right and Relation

WE HAVE STATED that the essence of marriage is the essential marriage right and the essential marriage relation, and that these two are different aspects of the same reality, if by right one understands the *fundamental* right, not merely the proximate right. This distinction between the proximate and fundamental right is important to our discussion for two reasons.

First, our purpose is to show that the secondary ends, like the primary ends, are essential to marriage, that is, they are essential because the marriage bond essentially consists in a right to the acts by which the ends are achieved. But if this means only the proximate right it does not explain the essentiality of the ends at all, because the proximate right to any of the acts by which the ends are achieved can be absent while the marriage bond remains. Therefore, we must invoke the well-known distinction between the proximate and fundamental right. But it is not enough to invoke it. The need for this distinction has been questioned by some; its

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meaning and validity by others. It requires fuller explanation.

Secondly we believe that when this distinction is properly explained, the coincidence of the notions "marriage right" and "marriage relation" will become intelligible, and that this will remove one of the obstacles that seems to estrange theologians and canonists when they discuss the nature of marriage.

It is our hope that by explaining (1) the need of this distinction, and (2) its meaning, we will be able to show that (3) the object of the fundamental right as well as the term of the marriage relation is *the person of the partner*.

THE NEED OF THE DISTINCTION

Canonists have regularly distinguished between the *ius in corpus* and the *usus iuris in corpus*. In fact a Rota decision about ten years ago criticized in unusually strong language the sentence of a lower court which seemed to deny the validity of the distinction.¹ Pius XII himself made use of it in the Address to the Midwives. It is used to explain cases in which the actual use of marriage is omitted or excluded or impossible while the right to use it remains; or cases in which matrimonial consent, which is consent to the *ius in corpus* etc., remains substantially intact even though there is present at least an intention not to make use of it. The case treated by Pius XII serves as a good example. Matrimonial consent is not vitiated, he says, by a pre-marital agreement to practice periodic continence, if the agreement does not exclude the perpetual marriage *right* but only excludes

¹ *Sententia S.R. Rotae*, 23 Feb. 1951, coram Staffa, *Decisiones S.R. Rotae*, vol. 43, Decis. 17, n. 5, pp. 131-46 at p. 134; Cf partial text in *AAS*, 43 (1951), 872-877 at 875. Also reported in Bouscaren, *Canon Law Digest*, III, p. 440.

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the use of the marriage right during certain periods.² This distinction explains cases in which the actual use of marriage is restricted, but not restricted in such a way that the use of marriage itself would be a violation of commutative justice.

This distinction, however, between right and use of right is of no avail in explaining cases like the following:

1) When the husband has committed adultery he loses the right to intercourse. If he forces intercourse on his wife he is guilty of injustice. In such a case not only is the use of the right gone, but the right to use it is gone, if the innocent party knows of the other's infidelity and refuses to condone it.

Furthermore, if at the time of the celebration of the marriage one or both of the parties explicitly intended that the marriage right would be subject to the above-mentioned restriction, it could not be maintained that this would be an invalidating restriction. For instance, if there were from the beginning the explicit intention of insisting on one's canonical rights in case of future adultery and of not condoning it, this pre-marital restriction would certainly not invalidate marriage.

2) When by mutual agreement and by permission of the Holy See the partners in a consummated marriage separate and both enter religion, neither one has the right to use marriage again. If Mother Connelly's husband, after becoming a priest, demanded that she resume full conjugal life with him he violated, *affective*, his obligation of chastity. But in addition he would have been guilty of injustice in demanding his marriage "rights." Such couples have given

² Address to Midwives, AAS, 43 (1951), 835-854 at 845.

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up not only the use of their right, but the right to use it. The injustice is clear, at least for the case where one party is unwilling.

3) In the old canon law the *privilegium bimestre* was a recognized institution.³ This is perhaps the clearest example of a pre-marital restriction on the right to intercourse, not merely on the use of the right. In accordance with this privilege, during the two months period immediately following the celebration of the marriage neither party could demand intercourse. That is, neither party had a right to demand it of the other. This time was granted so that the partners could deliberate about entering religion if they cared to do so. If one party forced intercourse on the other during this period it was a serious sin of injustice.⁴

The law itself, therefore, put this implicit restriction on the marriage right itself; but there was never any thought that this endangered the validity of marriage. It was only in 1918 that the new Code explicitly abolished the *privilegium bimestre*, which had gone into practical desuetude long before. Canon 1111 declares: "Both spouses from the very beginning of marriage have an equal right and duty with regard to the acts proper to conjugal life." Commentators tell us that the phrase "from the very beginning of marriage" was inserted to clear away the last vestige of the *privilegium bimestre*.⁵

But during the many centuries when the privilege was in

³ Cf. for example, St. Thomas, *In IV Sent.*, lib. 4, dist. 27, q. 2, art. e, ad 2; Aegidius Coninck, *De Sacramentis et Censuris* (Antwerp: 1616), tom. II, disp. 24, dub. 4, n. 45; and classical commentators on the Decretals; and cf. Alois DeSmet, *De Sponsalibus et Matrimonio* (Bruges: Bayaert, 1927, ed. 4a), p. 224, 2.

⁴ Cf. for example Thomas Sanchez, *Disputationes de Sancto Matrimonii Sacramento* (Venetiis: 1737), lib. 2, disp. 22.

⁵ Petrus Card. Gasparri, *De Matrimonio* (Rome: Typis Polyglottis Vaticanis, 1932), vol. II, n. 1086, nota 1; De Smet, *ibid*.

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effect as part of the general law of the Church, it would have been entirely lawful and it would in no wise have affected the validity of the marriage, if one or both of the partners, prior to the marriage, explicitly reserved the right to refuse intercourse during the first two months after its celebration. This example demonstrates that it is possible to have valid consent in a case where a restriction is placed on the right itself, and not merely on the use of the right.

In all these examples, whether of post-marital or pre-marital restrictions or agreements, it is clear that the fundamental marriage bond remains unaffected. The essence of marriage is there even when the right to intercourse is not there. In our opinion, therefore, it is not sufficient, in order to explain these cases, to appeal to the distinction between the right and the use of the right. For in these cases not only the use of the right but the right to use is gone. It does not seem to make sense to say, without any distinction between proximate and fundamental, that the marriage right is still there, but that the right to use the marriage right has disappeared. This is particularly difficult to understand when we remember that the marriage right itself is a right of use, not a right to the substance of the partner's person.

It is to explain cases of this kind, to explain how it is that the marriage right, the *ius in corpus* which is the bond of marriage itself, is still present even when the right to intercourse is absent, that theologians and canonists have introduced the distinction between the fundamental right (also called the radical right) and the proximate right (also called the unimpeded right, *ius expeditum*). Although a few Rota decisions have questioned it,⁶ the eminent Rota judge

⁶ *Sententia S.R. Rotae*, 14 Mar. 1924, coram Chimenti, *Decisiones S.R. Rotae*, vol. 16, Decis. 14, n. 2, pp. 106-113 at p. 108; *Sententia S.R. Rotae*, 23 Feb. 1951, coram Staffa, *ut supra*, note 1.

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Arthur Wynen relies on this distinction in the well-known Rota decision of Jan. 22, 1944, discussing the place of the secondary ends in marriage.⁷

This much is clear. Everyone is agreed that there are cases where the right to intercourse is gone while the *ius in corpus* which is the essence of marriage is still there. The marriage bond still exists in certain cases where the right to intercourse is either temporarily or permanently excluded. And yet the *ius in corpus* which is the essential object of consent according to canon 1081 § 2 is a perpetual right.

To the present writers it seems impossible to explain this apparent contradiction without distinguishing the word *right*. The distinction between right and use of right is not enough. The right itself must be somehow distinguished. For centuries canonists and theologians have made the distinction, using the terms fundamental or radical right as against proximate or unimpeded right.⁸ We believe this dis-

⁷ Sententia S.R. Rotae, 22 Jan. 1944, coram Wynen, *Decisiones S.R. Rotae*, vol. 36, Decis. 6, n. 13, pp. 55-79 at p. 63; quoted in part in AAS, 36 (1944), 179-200 at 186 (n. 13).

⁸ This distinction, according to Staffa (who rejects it; cf. note 6, above) has been used by other Rota judges, his predecessors, and by modern writers. In fact, it has been used frequently (with this or equivalent terminology) in canonical and theological literature for a very long time, as the following references indicate: A. de Coninck, *De Sacramentis et Censuris* (Antwerp: 1616), tom. II, disp. 24, de essentia matr., dub. 4, n. 47; Bartholomaeus Mastrius de Meldula, *Disputationes Theologicae* (Venice: 1719), in IV Sent., tom 4, disp. 7, q. 3, art. 3, n. 107; Vito Pichler, *Jus Canonicum* etc., (Venice: 1730), lib. 4, tit. 1, n. 79; Wirceburgenses, *Theologia Dogmatica* (Paris, 1880), tom. X, De Matr. n. 265; Carolus Billuart, *Summa Sancti Thomae* (Paris: ca. 1880), tom. VII, De Matr., diss. e, art. 5; Ballerini-Palmieri, *Opus Theologicum Morale* (Prati: 1892), vol. VI, n. 416, 2° and n. 417; Dominicus Palmieri, *Tractatus de Matrimonio Christiano* (Rome: 1880), Thesis I and Thesis III, n. VI; Augustinus Lehmkuhl, *Theologia Moralis* (Freiburg: Herder, 1910), vol. II, n. 882; Petrus Gaspari, *De Matrimonio* (Rome: Typis Polyglottis Vaticanis, 1932), Vol. II, n. 903; Alois de Smet, *De Sponsalibus et Matrimonio* (Brugis: Bayaert, 1927, ed. 4a), n. 219; Bartholomew Timlin, *Conditional Matrimonial Consent* (Washington: Catholic University Press 1934, Canon Law Studies, n. 89), p. 311 ff., p. 318; Benedictus H. Merkclbach, *Summa Theologiae Moralis* (Paris: Desclée de Brouwer, 1939), vol. III, n. 777, 5°

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tion, or its equivalent, is required by the theology, philosophy and canon law of marriage.

THE MEANING OF THE DISTINCTION

The difficulty about the meaning and the validity of the distinction may be stated thus: If the *ius in corpus* is a right of use, as all maintain, it cannot be further distinguished into a more fundamental right which would be a right to use the right of use. Such a distinction would be the start of an indefinite series of rights to use the right of use, etc., becoming nonsense. Is it not meaningless to distinguish between a right of use (*ius fundamentale*) and a right to use the right of use (*ius proximum*)?⁹

It is necessary, therefore, to analyze as accurately as possible the term "fundamental marriage right."

One of the commonest terms used to describe the *ius in corpus* is dominion. Husband and wife are said to have dominion over one another's bodies or persons. This theological usage of long standing is founded on St. Paul. "The wife has not power of her own body but the husband. And in like manner, the husband also has not power of his own body but the wife."¹⁰ The language of canon 1081 § 2, "a

and 8°; Matthaeus Conte a Coronata, *Institutiones Iuris Canonici, De Sacramentis* vol. III *De Matrimonio*, (Turin: Marietti, 1946), n. 517; Thomas A. Iorio, *Theologia Moralis* (Naples: D'Auria, 1954), vol. III, n. 924, 3°, nota 2; Felix Cappello, *De Matrimonio* (Rome: Marietti, 1961) n. 635; Arcturus Wynen, *loc. cit.* in note 7, above.

⁹ Cf. for example, Joseph Ubach, S.J., *Theologia Moralis* (Buenos Aires: Sociedad San Miguel, 1935, 2nd ed.), vol. II, n. 2681; *Sententia S.R. Rotae*, 23 Feb. 1951 coram Staffa, *ibid.* (cf. note 6, above); Josephus Card. D'Annibale, *Summula Theologiae Moralis* (Rome, 1908), n. 443, note 4; August Knecht, *Handbuch des Katholischen Eherechts* (Freiburg im Breisgau: 1928), p. 591, note; Kreutzwald, "Josephsehe," in *Kirchenlexikon* (Freiburg im Breisgau: Herder, 1889), vol. VI, col. 1878-9; Van de Burgt, *Tractatus de Matrimonio* (Utrecht: 1875), pars 2, paragr. 3, n. 68; Johannes Chelodi, *Jus Matrimoniale* (Tridenti: 1921), n. 125, etc.

¹⁰ 1 Cor., 7, 4.

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right to the person with view to acts" etc., undoubtedly owes its origin to this passage from the Corinthians. We prefer to translate the phrase from the canon as "right to the person with a view to acts" rather than "right to the body with a view to acts" because it conveys the meaning of the canon more accurately and is more in keeping with good English usage. In legal language the word person often means body, for example, when we speak of "crimes against the person." The word corpus in the canon obviously means the living body, living with human life. Lexicographers of Biblical Greek say that soma in this passage from Corinthians means "the living body as the seat of the sexual function."¹¹ It is noteworthy, too, that *Casti Connubii* uses the phrase *traditio personae* rather than the more familiar *traditio corporis*.¹²

At all events the right to the person or the body of the partner with a view to certain acts is a kind of dominion. Dominion may involve rights over the substance of a thing, or over the use of a thing, or both. We call a right to the substance direct dominion, or ownership or proprietorship; the right to the use indirect dominion, i.e. the right of a usufructuary, or user. If by the marriage right the partners acquired ownership of the substance of one another's persons or bodies it would be easy for jurists to distinguish this fundamental right to the substance from the right to the use. For the partners could still "own the substance" of each other's persons (or bodies, or sexual faculties, or sexual organs) while being deprived of the right to actual use. The

¹¹ Arndt and Gingrich, *A Greek-English Lexicon of the New Testament* (Bauer's), (Chicago: University of Chicago Press, 4th ed., 1952), sub verbo "soma."

¹² AAS, 22 (1930), 539-592 at 543 and 553. Individual marriages come into existence "per generosam quidem propriae personae pro toto vitae tempore factam alteri traditionem . . ." p. 543. And again, the indissolubility of marriage is required by the "generosa propriae personae traditio et intima suorum animorum consociatio . . . cum vera caritas finem nesciat," p. 553. Cf. also at p. 541 for reference to canon 1081 § 2.

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distinction between *ius in corpus* and *ius in usum iuris corporis* would then be more intelligible.

But the body and members of one person cannot be the object of ownership by another human person. Man does not have such direct dominion even over his own body and members. He does not own them. He is a steward who makes use of them. Pius XII, speaking to a congress of physicians and scientists about the morality of medical experimentation, said:

As for the patient, he is not absolute master of himself, of his body or of his soul. He cannot, therefore, freely dispose of himself as he pleases. . . . He has the right of use, limited by natural finality, of the faculties and powers of his human nature. Because he is a user and not a proprietor, he does not have unlimited power to destroy or mutilate his body and its functions.¹³

This is a common opinion of theologians, canonists and scholastic philosophers. Hardly anyone, therefore, has ever defended the idea that the *ius in corpus* is a right of direct dominion.¹⁴ On the contrary, since it is a right to the person of the partner *with a view to certain acts*, it is a right of use.

¹³ Address to the First International Congress on the Histopathology of the Nervous System: "On the Moral Limits of Medical Research and Experimentation," 13 Sept. 1952, AAS, 44 (1952), 779-789 at 782. In the same address, at p. 786-7, explaining the principle of totality with regard to the human body, he says: "The master and user of this organism . . . can dispose directly and immediately of integral parts, members and organs . . ." etc. To "dispose directly" in this context does not imply direct dominion. It means that one may *directly intend* to remove or mutilate certain organs under the principle of totality, even though one's dominion over them is not that of a proprietor, but that of a user. "Usufruitier" is the word employed by the Pontiff, a word which excludes the idea of direct dominion.

¹⁴ Ferdinandus Rebellus, *De Obligationibus Iustitiae* (Venice: 1610), De Just. et Jure, pars 2, lib. 2, q. 13, sect. 5, n. 51, is an exception. See also Martin Perez, *De Sancto Matrimonii Sacramento* (Lugduni: 1646), disp. 13, sect. 6, n. 10.

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It is for this reason that the difficulty we are considering is a real and challenging one for those who are interested in constructing a consistent, juridical framework of the essence of marriage.

It is our contention, however, that some rights of use are for practical purposes almost the equivalent of a right to the substance. There are some rights of use which in their permanent character, and in their extensive comprehension of the utilities of an object, admit of being distinguished into a proximate right of use and one more fundamental and remote which remains even when the proximate right is taken away. Some examples will help to make this clear.

The most obvious example is that of a man who subleases property on which he has a long lease. Just as the proprietor still has a right to the substance, has ownership, after giving a lease—even a perpetual one—to another, (and even if he has renounced his right to the rent, etc.), so the first lessee in sub-leasing remains the owner of his lease, even if he renounces his right to the rent. The first lease, being a thing of permanent character, is so much like a direct dominion, so fundamental in its embrace of the object's utilities that it is possible to distinguish it as a right from the more proximate right to actual use of the property. Its actual utility to the first lessee after he has made it over to another is slight but not meaningless. He retains an interest which in some eventualities may become actually useful. The law can recognize him as a person having rights or interests in that property. To say he has a right to it or an interest in it distinguished from the normal exercise of his right of use is not a contradiction.

This is a case, then, in which a right of use as distin-

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guished from a right to the substance can be further distinguished from a proximate right of use. Hence it is not so contradictory or meaningless as it seems at first sight to say that there are cases where a right to use can be distinguished from the right to exercise such a right. It is not contradictory or meaningless because the fundamental utility or good which is retained still has meaning when separated from the actual uses which are handed over to another. This could hardly happen in a case where a person's right of use were to a single act and to nothing else. When he handed over his right to that act he would hand over the only thing he had. But in those rights of use which are permanent, comprehensive, and more or less exhaustive of an object's utilities there is no contradiction.

In former times the example to come first to mind would have been that of a slave. Supposing a kind of slavery not utterly repugnant to the natural law (as chattel slavery would be), and explaining the relation of master and slave as the scholastics did, we must admit that here, too, we have an example in which a right of use and a right to exercise the right can be separated at least in part.

For it is a mistake to think that a master ever owned the substance of his slave—even the substance of his body. DeLugo explained slavery as an arrangement in which one “binds over all his labor and service to the master for his whole life.” He wrote:

A man cannot be the owner of himself, but he can be the owner of his operations and therefore he can sell himself and then he is said improperly to give the ownership of himself to another; but as a matter of fact he does not, properly speaking, hand over the ownership of himself absolutely but only with a

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view to certain of his operations; for not even the master can dispose of a slave as regards his life . . . etc.¹⁵

In other words a master's right to his slave was not a right of proprietorship; it was a right of use. He could call the person of the slave his only with regard to certain actions—very many, it is true, and for life, but by no means all—in any type of slavery not repugnant to natural law.

And yet a slave would still “belong” to his master, the master would still have a right to him, even if he loaned him out permanently and gratuitously to another and no longer got any useful services from him. The same would be true of a slave so old and sick as to be useless. He would still belong to the master even if the master could not demand a service of him without offending commutative justice. For it would always remain true that the slave was really his. He would retain a fundamental relation of preference with regard to the person of that individual which would enable him to call the slave *his*, in the limited sense admitted by scholastic writers. Furthermore, the slave would be his not in virtue of a *ius in substantiam* but in virtue of a right to the person with a view to those very acts (*ius in corpus in ordine ad actus*) which he cannot now demand of him without injustice.

We might make other analogies, all of them, of course, imperfect. For instance, the apprentice, bound out to one employer who loans him out gratuitously to another. He remains apprenticed to the first, whose fundamental relation of master and apprentice may still not be meaningless, even if he has lost his right to useful services. Or the motion picture actor all of whose histrionic services are “owned” by

¹⁵ Joannes Card. DeLugo, *De Justitia et Jure* (Lugduni: 1642), disp. 6, sect. 2, n. 14; and disp. 10, sect. 1, n. 9; compare Leonardus Lessius, *De Justitia et Jure* etc., (Lugduni: 1653), lib. 2, c. 4, dub. 10, n. 57.

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one company which has an exclusive contract for them, but who has been loaned out to another company. The first company still owns him while deprived of the right to some of those very services with a view to which the contractual relationship of so-called ownership was originally established.

In all these examples there is a fundamental right of use without the proximate right of exercising the right. These examples illustrate the principle that a right of use of a permanent and fundamental character can be separated from the proximate right of exercise which it normally includes.

This would be impossible, however, and the fundamental right would be meaningless, unless its possessor still retained some utility or good which he could call his own. In other words if the "owner" were deprived of all the good and all the utilities of an object, it would be mere nominalism to continue to call him the owner of the object or the possessor of a right to the object at all. But this would be true even if he were the owner of the substance, having direct dominion over an object. If a person had the absolutely naked legal ownership of an object while all its utilities and all its good were permanently alienated, without even the possibility of future reversion, he would have literally nothing. Unless the possessor of a right (whether to the substance or to the use) is entitled to do something, or receive something, or demand something, somehow or sometime in virtue of his right, it would be meaningless to say he had a right at all or to call him an owner or possessor in any sense. Conversely, a man does have a right to an object as long as he can say of it without offending common sense, that is, meaningfully: it belongs to me; it is mine.

Before applying these concepts to marriage let us recall by way of summary the following three points:

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1) The marriage bond is the marriage right itself, and this *ius in corpus* is actually a group of rights and obligations.

2) A right is a moral relation of preference that enables a man to call a thing his own. It is more accurately conceived as a relation than as a faculty.

3) A right of use, if sufficiently permanent and comprehensive, can be separated from the more proximate right of use which it normally includes.

With these points in mind there should be little difficulty in understanding the distinction between the fundamental right and the proximate right to the marriage act. For the marriage bond, or marriage right, is a relationship of such a permanent, fundamental and comprehensive character that it admits of being distinguished into a fundamental right of use and a proximate right of use. Hence when through adultery, or in the other cases given as examples above, the proximate right to intercourse is gone, it is not meaningless to say that the fundamental right is still there.

But if a right is defined as a faculty this would at least be confusing. It is difficult to apply the definition of right conceived as a faculty to the situation in which the adulterous spouse finds himself or herself. We think of faculties as active principles of operations, and to say that a man has a moral faculty entitling him to demand intercourse, when *de facto* he cannot demand it without injustice, is confusing. But in the conception of a right as a relation there is much less difficulty. The husband prevails over the person of his wife and she over his, with a view to the marriage act, to the exclusion of all others. He holds a place of preference with regard to her person which remains his and which no one else can take away. He can say of her person inasmuch as the marriage act is concerned: it belongs to me; it is mine.

With regard to the acts themselves, as future, supposing

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there is no impediment to the exercise of the right, he can say of them: they are mine;—not in so full a sense perhaps as he can of her person, since they are future and not determined in *individuo*, but still in a very real sense, inasmuch as he has the unimpeded right to receive them from her.¹⁶

And finally, even when by adultery or some other cause the proximate right to the acts disappears, he can still say of them: they are mine. For in virtue of the permanent relationship with his wife that is established in the fundamental right and bond he has acquired the power of positing those acts validly (if one may use the expression) even though illicitly. That is to say, he can posit them validly as *conjugal*, and an act performed unjustly, i.e., in circumstances where the very performance of it would violate justice, would still not be fornication. It would be valid as conjugal. Therefore it is his and he still has an intelligible right to it. Furthermore, it is his in the sense that no one else has a right to it, and anyone else who takes it is taking away something that belongs to him. His fundamental marriage right has been violated; not the proximate right of use which is no longer his.

THE OBJECT OF THE FUNDAMENTAL RIGHT

In making the distinction between a fundamental and a proximate right one implicitly admits that they are rights to two different things. For it is a real distinction. If one right can be separated from the other the distinction between

¹⁶ The partners' rights to conjugal acts can be compared to the rights acquired in an executory contract in which the contracting parties acquire a *ius ad rem*. But the fundamental right to each other's persons is more accurately described as a *ius in re*. This is the teaching, for example, of Lessius, *op. cit.*, lib. 2, c. 3, dub. 2, n. 7, and of Laymann, *Theologia Moralis* (Venice, 1719), lib. 5, tr. 10, pars 2, c. 1, n. 1. In English and American law some rights of use (which would not be called uses), for instance, a lease of land, are conceived as a *ius in re*.

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them must be real. Furthermore the real distinction is in the object of the rights. The subject of both the proximate and fundamental rights is the same, the married couple. The title to both rights is the same, their matrimonial consent. Only the objects differ. In this conception the fundamental right has as its object *the person* of the partner with a view to acts. The proximate right has as its object *the acts* themselves.

It may seem surprising to give to the marriage right two different objects. But what else can one do after making the well-known distinction between fundamental and proximate? How would it be possible to distinguish two rights at all—as we must, to explain the various cases where the proximate right is absent—without showing that there is question of rights to two different things? How can one make a real distinction where there is no real difference? Then, too, the difference is not so novel when we remember that the fundamental right is not any kind of right to the partner's person, but to the partner's person under a certain aspect, namely with a view to conjugal acts, as related and ordered to these conjugal acts, therefore to a person as sexually differentiated.

One might object also that when canonists explain the essential object of consent as enunciated in canon 1081 § 2: "*ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad generationem,*" they have never distinguished between a right to the person-with-a-view-to-acts and a right to the acts themselves. But it is our contention that they implicitly do just this whenever they invoke the familiar distinction between fundamental and proximate right. They invoke it when they are confronted with the difficulty of explaining those cases where marriage still exists when the right to intercourse no longer exists.

The Fundamental Right and Relation

And as a matter of fact does not the peculiar, indirect wording of the canon, "a right to the person with a view to acts," invite just such a distinction in the object of the rights as we have made? If the one essential, immediate object of matrimonial consent were merely the right to the procreative acts, why does not the canon say so? The canon almost makes the distinction itself by describing the object of consent as a right to the person-with-a-view-to-acts and not as a right to the acts themselves.

At any rate, although this way of interpreting canon 1081 § 2 may be new in its explicitness, it leads to no inadmissible consequences for canonical practice. This way of conceiving the fundamental and proximate right would not require any substantial changes in the established jurisprudence of the ecclesiastical courts. On the contrary it would provide an explanation for the kind of results that are already being arrived at in those cases where the judges have to rely on the distinction between fundamental and proximate right.

Finally this conception makes more intelligible our position that the marriage relation is the fundamental marriage right. The subject of the marriage relation, like the subject of the right, is the married couple. The foundation of the relation, like the title to the right, is the matrimonial consent. The term of the relation, like the object of the fundamental right, is the person of the partner. But again it is the person of the partner under a certain aspect, namely with a view to conjugal acts, and therefore as sexually differentiated.

This conception that the term of the marriage relation is the person of the partner, and that the object of the fundamental right is also the person of the partner, seems to us to harmonize the views of the many theologians who call the

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essence of marriage both a relation and a right. Nor does it seem inconsistent with any basic canonical position. Furthermore it seems to correspond with the idea of marriage which the partners themselves have derived from common understanding and even from the liturgical forms in which consent is exchanged.¹⁷ To consent to be husband and wife means to belong to one another, each person becoming as it were the possession of the other for life.¹⁸

But the term of the relationship of union is the person of the partner with a view to certain acts. The object of the fundamental right is the person with a view to acts. What are these acts? Are they only the acts by which the primary ends are achieved? Or does the fundamental marriage right connote essentially the acts by which the secondary ends, too, are achieved? In the following chapters we answer the latter question in the affirmative.

¹⁷ Cf. Chapter 5, pp. 88, 89.

¹⁸ Cf. *Casti Connubii*, AAS, 22 (1930), 539-592 at 543, 553, and cf. also 541. See above, note 12. This conception is confirmed by the classical canonical phrases used to describe in a concrete way the consent of the groom: "Accipio te in meam," and of the bride: "Accipio te in meum."

5



The Essential Character of the Secondary Ends

WE HAVE ENUMERATED the secondary ends, with Pius XI, as mutual help, the fostering of conjugal love and the remedy for concupiscence. The one word “companionship” is sometimes used to denote all three secondary ends taken together, just as the word “parenthood” denotes the primary ends, procreation and rearing, taken together. The terms “conjugal society,” life in common,” “*individua vitae consuetudo*,” etc., are sometimes used to describe mutual help as an end distinct from the primary end. Mutual help is also referred to as the life-partnership of the spouses to distinguish it from the procreative partnership. Remedy for concupiscence is occasionally called sexual fulfillment nowadays to give this end a more positive connotation. Although there are certain advantages in referring to mutual help as the life-partnership, and to the remedy as sexual fulfillment, we prefer to retain for the most part the established terminology.

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The values inherent in the secondary ends correspond remarkably, as we have seen, with the so-called personalist values in marriage, and so the secondary ends are sometimes called the personalist ends. Our main object in writing about the ends of marriage is to show that the secondary, personalist ends, while remaining essentially subordinate, are nevertheless truly *essential* ends of marriage, just as the primary ends are. The present chapter, which attempts to explain and establish this essentiality, contains, therefore, the gist and core of our exposition.

We turn first to the essential character of mutual help, because once this is established it will be easy (at the end of the present chapter) to apply the same reasoning to the remedy for concupiscence. The essentiality of conjugal love, because of its special importance and special problems, we reserve for the following chapter.

MEANING OF MUTUAL HELP

A well-known Rota decision gives this description of the elements that make up mutual help:

cohabitation, community of board, use of material goods, earning a living and administering it, help of a more personal kind in the various circumstances of life, in psychic and bodily needs, in the use of natural faculties, and even in the exercise of supernatural virtues.¹

Procreative or sexual activity is omitted from this rather complete description of mutual help. But all would agree that the sexual act, in addition to being a procreative act, is

¹ *Sententia S.R. Rotae*, 22 Jan. 1944, coram Wynen, *Decisiones S.R. Rotae*, vol. 36, Decis. 6, pp. 55-79 at p. 65, n. 79; *AAS*, 36 (1944), 179-206 at 187, n. 19.

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also an act of mutual help, of conjugal love, and of the remedy for concupiscence. In fact, Pius XI says in *Casti Connubii* that the sexual act has mutual help as its secondary end, referring precisely to those cases where it cannot actually result in procreation. Therefore, mutual help, the life-partnership, should not be conceived as entirely distinct from the sex-partnership in marriage. Conjugal companionship includes sexual companionship, even in sterile marriages and at sterile times—though never with the direct sacrifice of the fundamentally procreative character of the sexual act. The terms “life in common,” “conjugal society,” “cohabitation” (living under one roof), “*individua vitae consuetudo*,” etc., as used by the authors, sometimes include sexual relations, sometimes do not.

Note however that the word sexual can be taken in a strict or in a broad sense. In the strict sense it refers to genital sexuality only, the marriage act and its normal preliminaries and concomitants. In a broader sense the word sexual is properly descriptive of the whole married relationship. The sexes as such derive from one another in marriage that spiritual, physical, psychological and social completion which only the opposite sexes can give one another. The sexes *de facto* complement one another in all these fields. It is a kind of mutual perfecting to which nature itself inclines mankind precisely in virtue of mankind’s sexual differentiation. The supernatural vocation to marriage, the call to seek God together, the call to a mutual, interior sanctifying of one another (spoken of by Pius XI), is also a sexual perfecting of the partners in the broad sense of the word. To say that mutual help is an end of marriage means that marriage as an institution of nature and of grace is aimed at this reciprocal life-completion of the sexes. A specifically con-

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jugal partnership is necessarily a sexual partnership in both senses.²

We have seen how inextricably intertwined are the several ends of marriage. For instance it is an essential element of mutual help that by means of it the partners form an adequate principle for the rearing of the children who may bless their union. The love of the parents for one another is an all-important element in the rearing of the children. Pius XII observes:

. . . Even the depths of spirituality in conjugal love as such have been put by the will of nature and the Creator at the service of our descendants. By its nature, perfect married life means also the complete dedication of the parents for the benefit of their children, and in its strength and tenderness conjugal love is itself a postulate of the most sincere care for the offspring and the guarantee of its being carried out.³

The primary end, therefore, is achieved partly by acts of mutual help and conjugal love. The marriage act conduces both to procreation, mutual help, the remedy of concupiscence and conjugal love. Procreation, the self-continuation of the partners, is one of the most precious of personalist values. Thus there is nothing to prevent one and the same act from being conducive to the realization of several or all of the ends of marriage.

This is especially noteworthy in the case of the marriage act. It is not a mere means to reproduction, a function which men share with animals. It should be a *humanly* sexual act; human sexuality is not merely reproductive in

² Lucius F. Cervantes, S.J., *And God Made Man and Woman* (Chicago: Regnery, 1959), esp. Ch. 8.

³ Address to the Midwives, 29 Oct. 1951, AAS, 43 (1951), 835-954 at 849-850, with footnote reference to St. Thomas, III, q. 29, a. 2 in corp., and Suppl., q. 49 a. 2 ad 1.

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purpose. The sexual act is ordained by God and by nature for the attainment of the secondary, personalist ends of marriage as well as for the primary. All modern writers, following the lead of *Casti Connubii*, agree that the marriage act, both in cases where it can be and where it cannot be fruitful, is an act of mutual help and conjugal love. It is not only inherently procreative but inherently related to the personalist ends of marriage. Consequently even if one continued to insist that the *ius in corpus* is a right to intercourse and to nothing else, one could not reasonably exclude any of the essential, truly human, relationships connoted by the central act of conjugal life. The *ius in corpus* would have to be broadened at least to include the personalist ends as attainable and to be attained through the marriage act.⁴

But we go farther than this. When the secondary end, mutual help, is considered precisely as distinct from the primary end, its concept must include necessarily something more than the marriage act. The acts by which mutual help is principally and characteristically achieved are not merely the strictly sexual acts of marriage. It seems almost too obvious to require emphasis, but certain text book statements make it necessary to stress this point. The concept of mutual help as found in the writings of Catholic theologians throughout the centuries means essentially something more than sexual intercourse. Wynen is a witness to this tradition in his description of mutual help cited above, and also when he adds: "The aptitude and the right to mutual help are not restricted to *generative activity* nor are they primarily concerned with it . . ."⁵ To deny any real distinction between

⁴ See Paul M. Quay, S.J., "Contraception and Conjugal Love," *Theological Studies*, 23 (March 1961), 18-40. Cf. *Casti Connubii*, AAS, 22 (1930), 530-592 at 561.

⁵ Decision cited above (in note 1) at n. 30, 3°; AAS, 36 (1944), 179-206 at 193, n. 30, 3°.

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procreation and mutual help as *finis operis* of marriage goes counter to the established meaning of theological terms like life in common, *individua vitae consuetudo* etc., in order to force them into a narrowly restricted interpretation of *ius in corpus* as the essence of marriage. Mutual help means the life-partnership. To reduce this life-partnership in marriage to the point where it embraces only the strictly sexual acts of marriage in its essential content does violence to the meaning of theological language. This will appear still more clearly from the arguments we are going to adduce to show that mutual help is essential to marriage just as are procreation and rearing of children.

Hence we disagree with the opinion of certain writers that mutual help or *individua vitae consuetudo* consists essentially in the marriage act or the right to it and nothing else.

It is one thing to say that the concept of mutual help includes essentially something more than the marriage act. But it is not easy to define just what it does include, essentially. We content ourselves with saying that mutual help must include acts other than the marriage act. We are inclined to extend rather than restrict its content. As an example to which very few would object we suggest cohabitation, that is, the act of living together in one household, or under one roof, the sharing of everyday life in a family setting. We consider cohabitation to be part of the essential content of the concept of mutual help.

Understanding mutual help then as including something in addition to the strictly sexual relationship, and pointing to cohabitation as a concrete example of what we mean, we ask: is cohabitation just as essential to marriage as the marriage act? Our answer is in the affirmative. Therefore, just as marriage can exist without actual sexual intercourse, so it can exist without actual cohabitation. Just as it can exist

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without the proximate right to procreative acts, so it can exist without the proximate right to mutual help, for example the proximate right to cohabitation. But just as marriage cannot exist without a fundamental right to acts by which procreation and rearing are realized, so it cannot exist without a fundamental right to acts by which mutual help is realized, for example, a fundamental right to cohabitation. The same thing is true of acts by which conjugal love and the remedy for concupiscence are realized.

Those who have said that mutual help consists essentially in intercourse and nothing else have apparently been influenced by discussions encountered in canonical literature as to whether cohabitation is essential to marriage or only necessary to its integrity. In these discussions one notes immediately a confusion between the two ideas, acts of mutual help and the fundamental right and obligation to these acts; acts of cohabitation and the fundamental right and obligation to cohabitation. In our opinion this distinction, if only adverted to, would solve the difficulty, and obviate any seeming necessity of reducing the essential life-partnership to the sex act.

RIGHT TO MUTUAL HELP ESSENTIAL

In what follows we will propose the reasons that convince us that the fundamental *ius in corpus*, which is the essential bond of marriage, is a right not only to the acts by which procreation and rearing of children are realized, but also to the acts by which mutual help is realized.

1. That the essential *ius in corpus* is also a right to acts of mutual help seems to us to be an immediate corollary of the proposition, admitted by all, that mutual help is an essential, intrinsic *finis operis* of marriage. Since mutual help is an

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essential end of marriage, there must be among the rights which constitute the marriage bond the fundamental right to the acts by which this mutual help is realized. These are not merely sexual acts. Otherwise it is meaningless to say that mutual help is an essential element of marriage in any real sense. For what is that objective and essential ordination that the marriage bond bears to its ends? Being the juridical bond of a society, an entity of the moral order, the ordination can be nothing else but the rights and obligations of the parties with regard to the realization of those ends. This is true of contracts in general. Let us say, for instance, that the essential end of a certain contract of insurance is to receive indemnity in case of accident. This is the same thing as saying that the contract essentially consists in the right to receive and the obligation to pay the indemnity in case the accident happens. In other words, if the bond of marriage did not include essentially a fundamental right to acts of mutual help, then mutual help would not be in reality an essential, intrinsic, *finis operis* of marriage.

2. The second argument is derived from the fact that the right to mutual help (at least some mutual help) is essentially involved in the primary end of marriage, which is not only the procreation but also the rearing of children. Palmieri argues as follows:

In the intercourse of a man and woman which is ordered by nature to the procreation and rearing of offspring, it is necessary that the union of both be such that the mutual provision and care for the offspring be assured *per se*, that is from the nature of things, and therefore that they mutually obligate themselves to life in common. . . . It is necessary in other words that the agreement be of the essence of the union because the latter is essentially ordered to that end [rearing of children]: which is

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the same thing as saying that the union ought to include a mutual obligation to one another.⁶

By the mutual obligation to one another Palmieri means a mutual obligation to life in common, or mutual help. This argument, (which Palmieri uses here to prove that extramarital sexual relations are contrary to natural law), equally goes to show that the right and obligation to mutual help or to life in common pertains to the essence of marriage. Palmieri puts it more briefly elsewhere:

If marriage is a permanent thing, as we take for granted from common sense, then some kind of mutual obligation to life in common is reciprocal with the very power and obligation to carnal copula.⁷

St. Thomas makes the same point. He has an understanding of mutual help which would be unintelligible unless marriage included essentially the fundamental power and obligation to certain acts of mutual help in addition to strictly sexual acts. For instance, after raising the objection that the *tria bona* of marriage do not contain an adequate enumeration, since marriage is destined "not only for the procreation and rearing of children but also for the companionship of life in common for the sharing of activities (*consortium communis vitae, propter operum communicationem*)," he answers:

By offspring is understood not only the procreation of offspring but also its rearing; to this end is ordered the entire shar-

⁶ Dominicus Palmieri, *Tractatus de Matrimonio Christiano* (Rome: Typographia Polyglotta S. C. de Propaganda Fide, 1880), p. 40, thes. 6, n. III.

⁷ *Ibid.*, p. 6, thes. I, in V.

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ing of the activities which belong to husband and wife inasmuch as they are united in matrimony. . . . And thus in offspring as a principal end the other is included as secondary.⁸

To put the argument in summary form: Marriage is essentially ordered to the rearing of offspring. But mutual help and life in common are *per se* necessary for this rearing. Therefore the right and obligation to some life in common and some acts of mutual help are essential to marriage.

This argument supposes that the *ius in corpus* is a right not only to acts by which procreation is achieved but also to acts by which the rearing of children is achieved. How is this shown? By the argument just used (1.) with regard to mutual help. All agree that rearing of children is an essential *finis operis* of marriage. Therefore, the fundamental marriage right must include a right to the acts of rearing the child. Otherwise it is meaningless to call it an essential end. Furthermore, it is well established canonically that certain conditions *contra bonum prolis* invalidate marriage as being contrary to its substance or essence. For example, an absolute agreement to abort or murder all the children, attached to the consent as a condition, would invalidate the marriage, if it were a real condition and not merely an intention to violate matrimonial obligations after assuming them. We believe that most jurists would agree that such a condition would be invalidating as *contra bonum prolis*.⁹ This

⁸ Suppl., q. 49, art. 2, ad 1. And compare q. 41, art. 1, in corp.; q. 48, art. 1, in corp.: "Marriage . . . is essentially . . . a certain association of husband and wife with a view to carnal union and the other things which pertain to husband and wife as a result of the fact that they are given power over one another with a view to carnal union. And this association is called *conjugal union*." (Italics added.)

⁹ Cf. Mattheus a Coronata, O.F.M., *De Sacramentis*, Vol. III *De Matrimonio et Sacramentalibus* (Rome: Marietti, 1946), n. 515; Bartholomew Timlin, *Conditional Matrimonial Consent* (Washington: Catholic University of America Press, 1934), p. 284 sq.; Wernz-Vidal, *Jus Matrimoniale*

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confirms our position. For it would not be invalidating unless it were substantially incompatible with the essential object of consent. Therefore the essential object of consent must include a right to rear the children.

We would answer similarly the contention that the essential *ius in corpus* is a right to procreative acts but not a right to actual procreation of the child or not a right to children. In our opinion this distinction is valid when it is used as Pius XII uses it, to insist that the marriage contract does not give a right to the child by means of artificial insemination, but only by means of acts which are *per se* procreative.¹⁰ But it is not valid if it restricts the *ius in corpus* to the point where the essential object of matrimonial consent is a right to procreative acts without any reference to a right to actual procreation.¹¹

3. A third argument is derived from the classical legal definitions of marriage in *Corpus Iuris* and in the old Scholastics. For instance the *Magister Sententiarum* defines it: "the marital union of man and woman, between legitimate persons, maintaining life in common." St. Thomas, too, gives this definition, and the scholastics generally.¹² In

(Rome: 1925), vol. V, n. 518, note 32, gives the literature. But cf. A. DeSmet, *De Sponsalibus et Matrimonio* (Bruges: 1927), n. 155; G. Vromant, *Jus Missionariorum* (Paris: Desclée de Brouwer, 1952), *De Matrimonio*, n. 175; Vermeersch-Creusen, *Epitome Iuris Canonici*, II (Malines-Rome: 1940, 6th ed.), in 381.

¹⁰ Allocution to World Congress on Human Fertility and Sterility, 19 May, 1956, AAS, 48 (1956), 467-474 at 471.

¹¹ For a discussion of the problem of *ius ad actum* and *ius ad prolem*, see Gerald Kelly, S.J., "Notes on Moral Theology, 1950," *Theological Studies* 12 (1951), 52-92 at 86, 87; and "Notes on Moral Theology, 1952," *Theological Studies*, 14 (1953), 31-72 at 60, 61; Gulielmus Gaiquinta, "De Simulatione Partiali ob Exclusionem Boni Proles," *Ephemerides Iuris Canonici*, 4 n. 1, (1948), 131-147 at 138 ff.; Franciscus Hürth, S.J., "Dubia Matrimonialia," *Periodica* etc., 38 (1949), 207-334 at 207 ff.; W. Conway, "Marriage with Intention of Preventing Children, *Irish Ecclesiastical Record*, 77 (1952), 46-48.

¹² In *IV Sent.*, Lib. IV, dist. 17: "Maritalis coniunctio viri et feminae inter legitimas personas, individuum vitae consuetudinem retinens."

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the *Corpus Iuris Civilis* we find this definition: "Marriage is the union of male and female and the sharing of the whole of life, the communication of divine and human law."¹³ This definition is quoted in *Casti Connubii* to emphasize the importance of community of life in marriage.¹⁴ In Justinian's *Institutes* marriage is defined as "the union of man and woman maintaining life in common."¹⁵

We do not intend to discuss the history of these definitions or the interpretations which they have received, and to which at times they have been twisted, in the course of the centuries. And we are aware of the caution with which such ancient formulations should be applied to our present day conceptions of marriage: Our point is simply this: These definitions are incorporated in the theological and canonical tradition of the Church. Now the thing which these classical definitions mention explicitly as constituting marriage, namely life in common, can hardly be less essential than some other element which they merely imply. It is easy to see how the right to the marriage act is included and implied in these definitions. But this being true, it is very difficult to see how conjugal life in common can be anything less than essential likewise—and that a fortiori.

And so we consider that these definitions, recognized in theology and canon law, merely in their obvious reading

¹³ Modestinus (In Dig., lib. 23, II de ritu nuptiarum), lib. I Reg.: "Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae divini et humani iuris communicatio." The phrase "divini et humani iuris communicatio" is of Roman origin and means that the wife shares in the *sacra (familiaria)* of the husband as well as in his temporal goods and civil status; cf. Cappello, *De Matrimonio*, n. 2 note 8, citing Voet, *Commentaria ad Pandectas*, lib. 23, tit. 2, de ritu nuptiarum, n. 6.

¹⁴ AAS, 22 (1930), 539-592 at 572. At this point Pius XI is explaining the reasons why mixed marriages are forbidden.

¹⁵ *Instit.* I, 9 de patria potestate, paragr. 1: "Nuptiae autem sive matrimonium est viri et mulieris coniunctio individuum vitae consuetudinem continens."

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confirm the position that the fundamental right to mutual help, or life in common, must be essential to marriage.

Palmieri makes the same point, speaking of the secondary end of marriage:

And indeed this true friendship, or as St. Thomas calls it, this indivisible union of souls between spouses obliged to keep faith with one another, is the good thing principally recommended and the only one explicitly mentioned in the definition of marriage traditional in the law.¹⁶

4. A fourth and final argument is drawn from the common persuasion of those who are getting married. After all, they are the ones who are giving their consent. It is not to be supposed, of course, that they have divined the distinction between a proximate and fundamental right, either to mutual help or to anything else. They have not thought of marriage in the language of the law; and when they marry they consent, as the Ritual demands, merely to the relationship of man and wife—without, one may be sure, any analysis of what is essentially and non-essentially implied in that relationship.

But our point is this: it would be strange indeed if those who are getting married, who make so much of the idea of mutual help, conjugal society, cohabitation, and conjugal love—it would be strange indeed if their conviction were radically erroneous. It seems to be an affront to common sense to tell the world of married people: "You think that marriage consists in a life-long partnership of which the marriage act is only one part, and perhaps not always the most important. But you are wrong. The truth is that the relation of marriage to the marriage act is the only essential thing in

¹⁶ *Op. cit.*, p. 10, thes. II, n. II.

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it. Its relation to all those other elements of mutual help, and conjugal love, and life in common, and cohabitation and the sharing of one another's lives is non-essential. All that is merely accidental. Marriage consists essentially in the right to sexual intercourse and nothing else." And yet to deny that at least the fundamental right to these other elements is essential to marriage is to ask people to accept such statements.

The common sense view can defend itself quite creditably by appealing to the Ritual which the Church uses in marrying the faithful. In the nuptial Mass, whether we turn to the Epistle, the Gospel, or the nuptial prayer after the *Pater Noster*, we will find that the Church talks of marriage according to the common concept of it. When, preparatory to asking the consent she makes the more or less official admonitions which are contained in the various approved rituals, the picture of marriage given to the bride and groom is principally that of a life-long sharing of one another's lives, with a view, of course, to children. When she asks their consent, she merely asks them to accept one another as husband and wife, and they are well justified in conceiving this relationship in the way it has just been proposed to them in the ceremonies and admonitions.

We think this universal persuasion about the importance of the element of mutual help confirms the reasonableness of our position. We think it entirely reasonable to suppose that when the husband and wife immediately after giving their consent are asked to join hands and make the following promise, as the Catholic Ritual in English speaking countries requires, they are assuming rights and obligations that are just as essential to their new state of life as the right to sexual intercourse. The words of the Ritual read: "I, N.

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N. . . . take you N.N. . . . for my lawful wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, until death do us part."¹⁷

CANONICAL OBJECTIONS

The distinguished Rota judge, Monsignor Arthur Wynen, in a profound and painstaking analysis of the relation of the secondary end to the primary end, comes to the conclusion that the right to mutual help and life in common belongs to marriage from the very nature of marriage and from the will of the Creator. Mutual help constitutes a secondary, intrinsically subordinate *finis operis* of marriage.¹⁸ It is therefore intrinsic to marriage. He shows so clearly the essential connection between the secondary and primary right in marriage, and the intrinsic subordination of the former to the latter, that one would expect him to draw the easy inference that the secondary right is a constitutive part of the essential marriage bond. But he does not draw that inference. On the contrary, he describes it as a natural consequence of the essential marriage right rather than a constitutive part of this right.¹⁹

Apparently there are two reasons which prevent Wynen from drawing the conclusion which would seem to follow so naturally from his exposition of mutual help as an intrinsic *finis operis* essential to marriage. First, he assumes that canon 1081 § 2 must be interpreted, as it so often is, to mean that the essential object of consent is a fundamental

¹⁷ *Priest's New Ritual* (Baltimore: John Murphy Co., 1931), p. 210; *Collectio Rituum* (Milwaukee: Bruce, 1955), p. 111.

¹⁸ Decision cited above (in note 1), n. 21 ff., esp. n. 30. For partial quotation from Wynen, see Chapter 7, p. 132 f.

¹⁹ *Ibid.*, n. 30, 4°.

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right to intercourse and nothing else. He appears to take this for granted as if there could be no question of it. Secondly, he accepts the doctrine of many authorities (and perhaps of some court decisions) that an explicit condition *de non cohabitando*, not to maintain any life in common, does not invalidate consent; cf. Canon 1128. Now cohabitation is admittedly one of the principal and most characteristic acts of mutual help. He holds, therefore, that since this condition does not invalidate, marriage can be validly contracted even though the parties explicitly exclude from consent any right at all to mutual help, the secondary, essential, intrinsic *finis operis* of marriage.²⁰ This seems to us to involve an inconsistency, nor is it a position we are forced to take by reason of the canons.

(1) Canon 1081 § 2 says that "Matrimonial consent is an act of the will by which each party gives and receives a perpetual and exclusive right to the person with a view to acts which are of themselves apt for the generation of children."²¹ It is objected that this is the canon which tells us the meaning of *ius in corpus* and yet it merely describes it as a right to the person with a view to intercourse. Therefore, the objection concludes, the essential object of consent is intercourse and nothing else.

It seems to us questionable, however, to assume that the canon exhausts the whole complex meaning of *ius in corpus*, or gives us a complete description of the essential object of consent without reference to any other part of the Code. It must be read in its context, especially the other canons

²⁰ *Ibid.*, n. 24.

²¹ Canon 1081 § 2: "Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad proles generationem."

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under the rubric: *De Consensu Matrimoniali*, and in the light of other theological principles, in order to be properly understood.

In the first place, canon 1081 § 2 itself speaks explicitly only of a right to procreative acts, saying nothing explicitly about the right to educative acts, which, all are agreed, pertain essentially to the primary end of marriage. Many writers, perhaps the majority nowadays, who take *ius in corpus* in the narrow sense, would nevertheless admit that just as it stands in canon 1081 § 2 the phrase implicitly includes a right to have children as well as a right to have intercourse, and a right to the rearing of these children if intercourse resulted in children.²² The majority would hold that a condition to abort or murder all the offspring could be invalidating even if the parties consented to a right to normal intercourse.²³ This point is made to show that it is not at all canonically impossible to interpret the *ius in corpus* of canon 1081 § 2 as including essentially something more than a mere right to intercourse. From the silence of canon 1081 § 2 we cannot draw any convincing conclusion. It mentions procreative acts. It is silent on educative acts. Why may it not also be silent about the fundamental right to acts of mutual help?

Further light is thrown on this possibility by considering the very next canon, 1082 § 1: "In order that matrimonial consent exist it is necessary that the contracting parties shall at least not be ignorant that marriage is a permanent society between man and woman for the procreation of children."²⁴ We have already indicated that the idea of permanent con-

²² Cf. note 11, above.

²³ Cf. note 9, above.

²⁴ Canon 1082 § 1: "Ut matrimonialis consensus haberi possit, necesse est ut contrahentes saltem non ignorent matrimonium esse societatem permanentem inter virum et mulierem ad filios procreandos."

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jugal society, in the history of theology and canon law, involves something more than procreative acts, and that it largely coincides with the concept of mutual help. It seems very unlikely that the phrase in the canon, "permanent society between man and woman," was meant to prescind from or exclude this usage, so that it means a contractual agreement to have intercourse, and essentially nothing more. Does it not seem more likely that the "permanent society" must refer to conjugal life in common, a life-partnership connoting essentially something over and above their sexual relations? Those who give their consent would be astounded to learn that it did not.

Now it would be very strange if the Code inculcated as something necessarily to be known by the parties in order that consent be valid an element which is non-essential in the object of consent. Ignorance of a non-essential element would not invalidate. But ignorance that marriage is a permanent society between man and woman does invalidate.

Therefore, the more consistent interpretation of these two canons taken together seems to be that the essential object of consent includes something more than a mere right to intercourse. This something more is expressed in the phrase *permanens societas*. To interpret this phrase as connoting mutual help is anything but far-fetched in the context. Whether the canonists who composed the canon had this explicitly in mind is another question.²⁵ Our point is that the canon is written in terms which objectively bear this interpretation, and which, for the reasons given, require

²⁵ We do not contend that canon 1082 § 1 was written with the intention of broadening the concept of *ius in corpus* to include the right to mutual help. It was written to define the minimal essential knowledge of marriage which is necessary for valid consent, and to indicate thereby that a detailed knowledge of sexual intercourse is not necessary for valid consent. (Cf. Petrus Gasparri, *Fontes* [Rome: Typis Polyglottis Vaticanis, 1932], vol. 6, p. 691, document 4272, S.C.C., Ventimilien, 19 maii, 18 Aug. 1888.)

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some such interpretation. Let us recall again Palmieri's statement (which merely echoes the teaching of St. Thomas):

If marriage is a permanent thing, as we take for granted from common sense, then some kind of mutual obligation to life in common is reciprocal with the very power and obligation to carnal copula.²⁶

(2) Canon 1128: "The partners ought to observe conjugal life in common, unless a just cause excuses them."²⁷ Some have argued that this canon does not consider the right to conjugal life in common essential, because otherwise nothing could excuse from it. But this is not a real difficulty. Canon 1128 proves no more than would a similar, imaginary canon which would read as follows: "The partners ought to render the conjugal debitum, unless a just cause excuses them." Everyone would admit this statement but no one would conclude from it: "Therefore the right to the debitum is not essential to marriage." It would simply prove that the normal consequence, not the essential consequence, of marriage is the debitum and the unimpeded right to the debitum. Similarly we maintain that actual mutual help and the unimpeded, proximate right to it, although they are normal consequences of the contract, are not essential to it; only the fundamental right is. Canon 1128 speaks only of the proximate right.

Canonists differ on the question whether a condition *de non cohabitando* invalidates marriage. At present most canonists, apparently following the lead of Gasparri, deny it. Gasparri says:

²⁶ Cf. note 7, above.

²⁷ Canon 1128: "Coniuges servare debent vitae coniugalis communionem, nisi iusta causa eos excuset."

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Many canonists believe that a condition *de non cohabitando in perpetuum* is against the substance of marriage; but if the matrimonial right is fully guaranteed to each party we do not think this doctrine is true, because community of habitation, bed, and board do not pertain to the substance of matrimony; and in fact a marriage of conscience is sometimes permitted with this condition either tacit or express.²⁸

The same line of argument is pursued by Wernz-Vidal, Cappello, and others, and it seems to be one of the reasons why Wynen refuses to make the right to mutual help part of the essential marriage right.²⁹ It also explains the attempt of some to reduce the essential content of the concept of mutual help, or life in common, to sexual intercourse and nothing else.

But in these discussions one notes immediately a confusion between the two ideas, acts of mutual help and the fundamental right and obligation to those acts; acts of cohabitation and the fundamental right and obligation to cohabitation. In our opinion that distinction, if only adverted to, would solve the difficulty (as it does for similar problems concerning the primary end) and obviate any seeming necessity of reducing the essential meaning of mutual help to the sex act. The Church's toleration of marriages of conscience proves only that actual cohabitation, or at the most the proximate right to cohabitation, is not essential. Compare the position of Wynen with regard to a marriage in which the parties agree ahead of time not to use marriage sexually. Such a marriage can be valid, because the essential marriage right is exchanged.³⁰ Why cannot the

²⁸ Petrus Card. Gaspari, *De Matrimonio* (Rome: Typis Polyglottis Vaticanis, 1932), n. 905.

²⁹ Wernz-Vidal, *Op. cit.*, Vol. V, n. 600; Cappello, *De Matrimonio*, n. 631.

³⁰ Decision cited above (in note 1), n. 25.

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same thing be true with regard to cohabitation? Is it not possible to give true matrimonial consent to a fundamental right to mutual help, life in common, cohabitation, even if actual mutual help, or even the proximate right to mutual help is absent?

(3) Another difficulty against our position from the viewpoint of canon law may be mentioned in passing: Neither canon 1086 § 2, nor canon 1092, 2°, which tell us what intentions against the essence or conditions against the substance of marriage invalidate consent, mentions a condition against mutual help as invalidating. And of course, if the fundamental right to acts of mutual help is essential to the marriage bond, then a positive intention or condition excluding such a right would invalidate. It should be noted, therefore, that the Code, in neither one nor the other canon, lists *taxative* all the conditions or intentions against the substance. For instance, a condition of aborting or murdering all the offspring is generally considered to be a condition against the substance. Yet the Code makes no mention of such a condition. Hence from the silence of the Code as to a condition against any right whatever to mutual help nothing certain can be concluded.

There seems to be no insurmountable difficulty, then, in admitting that such conditions would invalidate just as surely as a condition which excludes all right to the marriage act. The jurisprudence of the ecclesiastical tribunals would offer no insuperable difficulty on this score. Even if they have declared or would declare valid a marriage made with an agreement exclusive of common life or mutual help, this would hardly be definitive on the question whether a fundamental right to life in common is part of the essence of marriage. For in practice in cases of this kind it does not occur that the parties clarify their intention to the point of dis-

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tinguishing a simple intention not to live together, a binding agreement not to live together, an agreement which excludes the proximate right, and an agreement which excludes the fundamental right. This is true whether the case concerns a right to procreative acts, or a right to the acts of mutual help. Not one couple in a thousand has ever thought of marriage in juridical terms of this kind. They do not know that its essence in juridical terms is a right or rights whether proximate or fundamental. In fact when they give consent to it they are often much more explicitly aware that it means a permanent union of life in common than that it means a union for the purpose of procreating and rearing children—especially if the parties are of advanced years when they marry.

When problems of invalid consent and invalidating conditions arise, the courts almost always have to rely on presumptions, not on explicit juridical formulae concerning the object of consent expressed in the consent itself. On the basis of all the evidence they try to determine whether real consent to the substance of marriage was given, or whether consent was substantially vitiated. However, it must be admitted, that if judges believed, as we do, that the fundamental right to mutual help is essential, they would more easily arrive at presumptions against validity in cases where mutual help was *de facto* excluded.

Would this be undesirable? Nowadays there are persons who marry with an explicit agreement to live no conjugal life in common—to maintain separate establishments, to reserve their independence of one another. Such an agreement could easily be the product of an essentially deformed view of what marriage is, and could mean to exclude all right to conjugal life in common, even while admitting the right to sexual intercourse. In that case, in our opinion, the

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agreement would invalidate the marriage. This conclusion should cause no surprise. After all, what could be less like a real marriage than such an arrangement? Some of the classical authors, for example Sanchez and Schmalzgueber, and many others, teste Gasparri, clearly condemned such an agreement as invalidating.³¹

THE REMEDY FOR CONCUISCENCE AS AN ESSENTIAL END

The traditional phrase "remedy for concupiscence" implies that sexual concupiscence is a defect or a sickness. Theologians are still discussing the nature of concupiscence, and its status as a result of original sin.³² In the sense that after the fall man's passions (emotions) are disordered, are not as totally under the control of reason as they should be, or at least in the sense that concupiscence is a *fomes peccati*, it is properly called a defect or a sickness; therefore in need of a remedy. We do not quarrel with this terminology.

On the other hand sexual activity and sexual pleasure are now considered by theologians to have positive values. Formerly the attitude toward sex was negative and disparaging. Sexual expression even in marriage was somewhat reluctantly given its place. It needed to be "excused" by the *tria bona* of marriage. Today Catholic theologians attribute positive values to sex which would have surprised St. Augustine, if not St. Thomas. Pius XI in *Casti Connubii* teaches that the fostering of conjugal love is a secondary purpose of the sexual act. Pius XII in the Address to the Midwives, while firmly rejecting the excesses of an anti-Christian

³¹ Thomas Sanchez, *Disputationes de Sancto Matrimonii Sacramento* (Venetiis: 1737), lib. 5, disp. 10, n. 5; Franciscus Schmalzgrueber, *Jus Ecclesiasticum Universum* (Rome: 1843), lib. 4, De Matr., pars 1, tit. 1, n. 288; Gasparri, op. cit., n. 905.

³² E.g. Karl Rahner, "Zum Theologischen Begriff der Konkupiszenz," *Zeitschrift für Katholische Theologie*, 65 v. 2 (1941), 61-80.

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hedonism, defends the genuine positive values of human sexuality. He says to his audience of obstetrical nurses and social workers:

Therefore, tell the girl who is engaged or the young wife that you have come to speak to her of the values of married life, that these personal values, whether they relate to the body, the senses, or the spirit, are really genuine but that in the scale of values the Creator has put them not in the first but in the second place. . . .

The Creator who in His goodness and wisdom has willed to conserve and propagate the human race through the instrumentality of man and woman by uniting them in marriage has ordained also that in performing this function, husband and wife should experience pleasure and happiness both in body and soul. In seeking and enjoying this pleasure, therefore, couples do nothing wrong. They accept that which the Creator has given them.³³

Furthermore, modern theologians do not find the sole justification of sexual pleasure in the fact that it is a necessary means to procreation of children. They give it rather an inherent value of its own, at least in the sense that the choice of it by married people in the marriage act can be a good and virtuous choice even when it is impossible for the marriage act to result in new life. Consequently there is good reason for thinking of the remedy for concupiscence in more positive terms, and for calling it, as has been suggested, "sexual fulfillment."

Some apparently find the phrase "remedy for concupiscence" somewhat displeasing, as being depreciatory of the positive values of sex, and possibly uncomplimentary to one

³³ Address to the Midwives, AAS, 43 (1951), 835-854 at 850- 851.

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or both of the conjugal partners. Perhaps this lay behind the change in phraseology used in describing the traditional ends of marriage in a recent Anglican publication, which enumerates thus the three reasons why marriage was ordained:

(1) It was ordained for the increase of mankind according to the will of God, and that children might be brought up in the fear and nurture of the Lord, and to the praise of His holy name.

(2) It was ordained in order that the natural instincts and affections, implanted by God, should be hallowed and directed aright; that those called of God to this holy estate should continue therein in pureness of living.

(3) It was ordained for the mutual society, help and comfort, that the one ought to have of the other, both in prosperity and adversity.³⁴

However, while recognizing the positive values of the sexual companionship of the partners, and recognizing too that the phrase "sexual fulfillment" has a certain aptitude for expressing these, we prefer to retain the traditional expression, both because it is canonized in official usage, and because marriage really is a remedy for concupiscence.

In what sense? Not in the sense that marriage has the power of extinguishing or even of diminishing sexual desire. Nor does it mean that marriage directly circumvents the possibility of inordination in sexual matters. But it means first, that marriage gives legitimate scope to sexual desire; second, that inasmuch as it imposes the obligation of marital chastity it acts as a restraining influence on the partners in their

³⁴ C.I.P.B.C. *Draft Prayer Book*, 1956, cited in *The Family in Contemporary Society* (London: Society for Promoting Christian Knowledge [S.P.C.K.], 1958), Appendix 4, *Family Planning in India*, p. 224.

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sexual relations with one another, and forbids all sexual indulgence outside marriage; third, it indirectly forestalls inordination through the grace of the sacrament; and fourth, it indirectly forestalls inordination psychologically.

And this last in three ways. First the sexual act is ennobled in the minds of the partners because in it they make real for themselves the central fact in marriage, namely that they belong to one another, that they have made a self-sacrificing surrender of their persons to one another, that they have given up to a large extent their individual lives in the interest of that common life which is marriage. As the Ritual admonition says:

And so you begin your married life by the voluntary and complete surrender of your individual lives in the interest of that deeper and wider life which you are to have in common. Henceforth you will belong entirely to each other, you will be one in mind, one in heart, one in affections.³⁵

The marriage act understood as the culmination of such a loving surrender cannot but be ennobled in the minds of the partners.

Second, the fact that the marriage act is essentially an act of human parenthood, and is thought of in terms of co-operation with God in the procreation of new life, lifts it above the sphere of sense gratification which men and animals have in common, and makes it a truly human act. This is the aspect dwelt on by St. Augustine. Concupiscence burns more chastely, he tells us, when the thought of parenthood tempers its fires and lends dignity to the pleasures of sense.³⁶

³⁵ *Priest's New Ritual*, p. 207, 208; *Collectio Rituum*, p. 109.

³⁶ *De Bono Conjugali*, c. 3 (n. 3), PL 40, 375: "Deinde [bonae sunt

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Third, the chaste use of marriage is psychologically valuable in the easing of human tensions. Sexual abstinence over long periods of time creates undue tensions in many individuals. These tensions are connected with sexual concupiscence even when not obviously sexual in origin. Marriage can remedy such tensions in many individuals because it provides a legitimate fulfillment for human sexuality.³⁷

We do not attempt to define just what is and is not essential to the concept of the remedy for concupiscence. But we can say at least this much about it. In its positive aspect it is principally achieved by the strictly sexual acts of marriage and is therefore an aspect or formality of the sexual use of marriage.

Of these acts under this formality, we assert that the fundamental right to them is essential to marriage. Otherwise it seems to us meaningless to say that the remedy is an intrinsic, essential *finis operis* of marriage. In other words, the fundamental right to the marriage act should also be understood to include the fundamental right to this act as a remedy for concupiscence.

From all the above considerations taken together we believe our position has been established: the essential marriage bond includes a fundamental right to the acts of mutual help and of the remedy for concupiscence as well as to the acts which are *per se* apt for the generation of chil-

nuptiae] quia reprimatur et quodam modo verecundius astuat concupiscentia carnis quam temperat parentalis affectus. Intercedit enim quaedam gravitas fervidae voluptatis cum in eo quod sibi vir et mulier adhaerescunt, pater et mater esse meditantur."

³⁷ Cf. Edward F. Sheridan, S.J., *The Morality of the Pleasure Motive in the Use of Marriage*, ms. conclusion, pp. 6, 7; See Chapter 9, pp. 20, 21. See also on broader meaning of remedy for concupiscence: Bernard J. F. Lonergan, S.J., "Finality, Love, Marriage," *Theological Studies*, 4 (1943) 477-510 at 508.

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dren. This is what is meant by the essential character of the secondary ends. The application of the same principles to the fostering of conjugal love as a secondary end will be explained in the following chapter.

6



Conjugal Love as an Essential End

OF ALL THE personalist values conjugal love is the one most frequently extolled and at times exaggerated by modern writers. We do not speak here of the clearly untenable views of certain non-Christian marriage reformers according to whom:

Wherever conjugal affection is found between man and woman and as long as it is found, there is marriage; when love ceases the inclination to cohabitation and to copula cease; the right and obligation to them ought to cease, too. . . .¹

We speak rather of the exaggerations of certain Catholic writers who wish to remain faithful to the fundamental doctrines of the Church but who, nevertheless, have given a false emphasis and importance to conjugal love (especially its sexual expression) as an element of marriage. Pius XII referred to such views when he wrote:

¹ Their views are thus summarized by Ivo Zeiger, S.J., "Nova Matrimonii Definitio?", *Periodica*, 20 (1931) 36*-59* at 38*.

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"Personal values" and the necessity of respecting them is a theme which for two decades has occupied writers more and more. In many of their lucubrations even the specifically sexual act has its place assigned to it: to be at the service of the persons of the spouses. The peculiar and deepest meaning of the exercise of the conjugal right would thus consist in this, that bodily union is the expression and actualization of personal affective union.²

Twenty years earlier Ivo Zeiger had criticized the views of some of these writers, summarizing their opinions as follows:

According to Brugi the essential end of marriage consists only in the mutual help of the partners; according to Miceli, on the other hand, in a complement of personality, which the partners bring to one another by their opposite sexual qualities both of body and especially of mind. The essential thing in marriage, then, is a union of souls in mutual, personal, spiritual love. And these points are proposed more distinctly by Viglino and Cornaggi Medici.³

It was exaggerations like these, and the similar propositions of Doms and Krempel, which were condemned by the

² Address to the Midwives, AAS, 43 (1951), 835-854 at 848.

³ Art. cit., p. 40*, citing Biagio Brugi, "L'articolo 107 del codice civile italiano e lo scopo del matrimonio," *Rivista internazionale di filosofia del diritto*, 5 (1925), 107 ff.; Vincenzo Miceli, "Ancora sull'articolo 107 nel codice civile italiano e lo scopo del matrimonio," *ibid.*, 6 (1926), 285 ff.; Camillo Viglino, "Un curioso equivoco sull'impotenza al matrimonio in diritto canonico," *Il diritto ecclesiastico*, 34 (1923), 1 ff.; other articles *ibid.*, 37 (1926), 163 ff.; 38 (1927), 149 ff., 272 ff.; 387 ff.; 39 (1928), 313 ff. *Rassegna di studi sessuali*, (1925), 81 ff.; *Rivista internazionale di filosofia del diritto*, 7 (1927), 71 ff.; Mons. Luigi Cornaggi Medici, "Delessenza del matrimonio e di due recenti scritti sull'impedimento dell'impotenza," *Il diritto ecclesiastico*, 39 (1928), 398 ff. The theories of Viglino and Cornaggi Medici on the sexual act as signifying and effecting a union of souls is traced by Zeiger to Rosmini's *Filosofia del diritto*, vol. II, p. 323 ff.

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Holy Office in its decree of April 1, 1944. The decree mentioned no names but clearly implied that some Catholics were making conjugal love the primary end of marriage.

But we should not conclude from this condemnation that Catholic theology and Catholic tradition underrate the value and importance of the mutual love of man and wife. There is no dearth of testimony from the time of Christ to the present day, to show how important in Catholic teaching is the unique love proper to married persons.

Our Lord Himself had this to say of the relations of man and wife:

Have ye not read that he who made man from the beginning made them male and female. And he said: For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be in one flesh. What therefore God hath joined together, let no man put asunder.*

And St. Paul's inspired interpretation of the text shows us (if that were necessary) that Our Lord here spoke of the love of husband and wife:

Husbands love your wives, as Christ also loved the Church, and delivered Himself up for it: that he might sanctify it, cleansing it by the laver of water in the word of life: that he might present it to himself a glorious church, not having spot or wrinkle, or any such thing; but that it should be holy and without blemish. So also ought men to love their wives as their own bodies. He that loves his wife loves himself. For no man ever hates his own flesh; but nourishes and cherishes it, as also Christ does the church: Because we are members of his body, of his flesh, and of his bones. For this reason shall a man leave his father and mother, and shall cleave to his wife, and they

* Matt. 19, 4-6.

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shall be two in one flesh. This is a great sacrament; but I speak in Christ and in the church.⁵

The Fathers and earlier scholastics, though reserved as to the indulgence of the sexual side of married love, do not neglect the love of friendship of husband and wife, which is supernaturalized by charity.⁶

The Council of Trent, after reaffirming the exclusiveness and indissolubility of the bond of matrimony, goes on to take notice both of the natural love which the sacrament presupposes, and the supernatural grace which sanctifies that love.⁷

Leo XIII, in the Encyclical *Arcanum Divinae Sapientiae*, insists that it is the doctrine of the Councils, the Fathers, and the tradition of the Church, based on the teaching of the Apostles, that Our Lord in raising marriage to the dignity of a sacrament perfected that love which is in accordance with human nature and cemented more firmly by the bond of divine charity the union of man and wife which by nature itself is an exclusive society.⁸

Among the moderns we will quote only DeSmet and Vermeersch to represent the many authors in the moral and

⁵ Ephes. 5, 25 f.

⁶ See for example: St. Augustine, *Sermo de SS.*, n. 51 (PL 38, 344); *De nuptiis et concupiscentia*, i, 11, n. 12 (PL 44, 420); *De bono viduitatis*, 8, n. 11 (PL 40, 437); *De sermone in monte*, i, 14 n. 39 (PL 34, 1249); *Contra Faustum*, xxiii, 8 (PL 42, 470-1); *De bono conjugali*, 3, in 3 (PL 40, 375); St. Thomas, *Summa Theol.*, II-II, q. 26, a. 11, corp.; and compare St. Jerome, *Epist.* 117: "Non superat amorem patris et fratris nisi solius uxoris affectus" (PL 22, 956).

⁷ *Concilium Trid.*, sess. 24, c. 1 "De reform. matr." (Denzinger-Rahner 969 f.); and compare *Catechismus ex decreto Concilii Tridentini ad Parochos* (Tomaci Nerviorum: Desclée, 1890), Pars II, caput De Matrimonii Sacramento, nn. 13, 14, 18.

⁸ Quoted by Denzinger-Rahner, *Enchiridion Symbolorum* (Barcelona, Rome, Friburg, 1957, ed. 31a) n. 1853.

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canonical tradition who do not neglect conjugal love. De-Smet:

Now the community of life, so close and intimate . . . imposed on the partners, is unintelligible . . . and . . . *teste experientia* will not remain firm without a really intimate union of souls based on enduring love. . . . The marriage act itself, by which the partners are made one flesh, cultivates and nourishes this love also, and the children conceived of the mutual union, being as it were the fruit and earnest of love, are a strong encouragement and confirmation of it.⁹

Vermeersch:

But at the same time [that marriage seeks its primary end through the marriage act] that affectionate intermingling of the two persons to which love aspires indicates another cause of contracting, which is not secondary and which is contained in the definition of the Roman law in which marriage is described as "a union of man and woman, maintaining life in common" . . .¹⁰

And in a marginal summary of this part of his work Vermeersch emphasizes a crucial concept:

The object of the contract is the mutual surrender of their persons for a strictly sexual union, *and therefore a mutual giving of themselves which requires to be made out of love.*¹¹

More important, however, than any theological writers, as

⁹ Alois De Smet, *De Sponsalibus et Matrimonio* (Bruges: Bayaert, 1927) n. 269.

¹⁰ Arthur Vermeersch, *Theologia Moralis*, Vol. IV *De Castitate*, (Rome: Gregorian University Press, 1933, ed. 3a) n. 41.

¹¹ *Ibid.*

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witnesses to the high regard in which the Church holds conjugal love, are some of the local or regional rituals. From these authorized books we can learn what concept of marriage the Church actually proposes to the contracting parties at the moment they give their consent. Examples could be multiplied.

We have already called attention to the promises of loving fidelity used in English-speaking countries.¹²

In many places in the United States, before consent is asked, the priest reads an exhortation in which the burden of the discourse is an insistence on the duty of conjugal love:

Henceforth you will belong entirely to each other; you will be one in mind, one in heart, one in affections. . . . No greater blessing can come to your married life than a pure conjugal love loyal and true to the end. May then this love with which you join your hands and hearts today never fail but grow deeper and stronger as the years go on.¹³

The ritual used in the diocese of Osnabrück in Germany directs the priest when asking consent to ask the husband if he intends to love his wife as Christ loved the Church; and asks the wife if she is willing to be subject lovingly to her husband as the Church is to Christ. After giving consent in these terms they exchange the wedding rings and are told that this is a pledge of the love and fidelity they have just vowed. Then they join hands and the Ritual tells them through the mouth of the priest that this joining of hands means that they are bound as by a sacred oath never to part but to persevere until death in inseparable love.¹⁴

¹² *Supra*. Chapter 5, p. 88 f.

¹³ *The Priest's New Ritual* (Baltimore: Murphy, 1931), 206-209; *Collectio Rituum [ad Instar Appendicis Ritualis Romani]* (Milwaukee: Bruce, 1954), Pars. I, tit 4 cap. 1, "Instruction Before Marriage," pp. 108-110.

¹⁴ *Manuale Collectioni Rituum pro Dioecesi Osnabrugensi Adaptatum*

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The ritual used in the diocese of Gran in Hungary has an especially significant ceremony. Immediately after consent the parties lay their hands on holy relics and swear that they love each other, that they take each other for husband and wife, and that they will remain faithful until death. This is followed by an exhortation which echoes the same refrain of love for each other as Christ loved the Church.¹⁵

The point we wish to make is that in these official books not only is love proposed as important to marriage but as being at least inseparable from it if not essential to it.

Although conjugal love has always held this unique place in the theology of marriage, moral and canonical manuals have not always done justice to it. Pastoral practice has not measured up to theological theory. Its essential nature and essential relationship to the bond of marriage has not been explained in a way that allows theologians and canonists to meet on common ground. Of all the elements in marriage it is the one about which canonical writers have the least to say. This is understandable. Love is an elusive concept, and one which is not usually relevant to the juridical disposition of cases which reach the ecclesiastical courts. On the other hand, in modern times there have been comprehensive and profound writings by Catholic theologians and philosophers on the nature of love in general and of conjugal love in particular.¹⁶

(Lingenae: 1934), 127, 129, etc.; see also *Collectio Rituum in Usam Archidieocesis Coloniensis* (Coloniae: 1929), tit. 5, c. 3, n. 8 ad fin., p. 74.

¹⁵ *Rituale Strigoniense* (Ratisbonae: 1909) tit. 7, c. 2, n. 14, p. 289. Compare the exhortation, taken from St. Augustine, in the *Manuale Tole-tanum*, tit. De Matr. (the ritual used widely throughout Spain and Spanish-speaking countries). Cf. also *The Lay Folks Ritual* (London 1916), containing in the vernacular the rites used in England; and for some more ancient rites see Edmundus Martene, *De Antiquis Ecclesiae Ritibus* (Ant-verpiae: 1763), tom. I, lib. 1, c. 9 art. 5, Ordo VII, X, XI; also Ordo XIII, where the form of consent is a promise to love the partner as one's self.

¹⁶ E.g., Martin C. D'Arcy, S.J., *The Mind and Heart of Love* (New

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The scope of our own analysis is more limited. Our aim is to bring theologians and canonists closer together by indicating a sense, acceptable to both, in which conjugal love is shown to be a truly essential end of marriage while remaining a truly subordinate one. With this in view we will attempt an answer to the following questions: (1) What is the essential concept of conjugal love? (2) In what sense is conjugal love thus conceived essential to marriage? (3) Should conjugal love be considered an essential end? Or essential property? Or both?

THE ESSENTIAL CONCEPT OF CONJUGAL LOVE

According to St. Thomas love has this general definition: To love is to wish good to someone. "Amare est velle alicui bonum."¹⁷ The love of friendship can be defined as the virtue by which two or more persons wish to communicate benefits to one another. Applying these ideas to conjugal love we attempt the following definition, hoping that its explanation will be its justification: *Conjugal love is the virtue by which man and wife wish to communicate to each other the benefits proper to marriage.* This definition requires some detailed explanation.¹⁸

Love. Love may be considered as a habit of the sensitive or of the rational appetite. In the concrete, of course,

York: Henry Holt, 1947); Michael F. McAuliffe, *Catholic Moral Teaching on the Nature and Object of Conjugal Love* (Washington, D.C., Catholic University of America Press, 1954); Bernard J. F. Lonergan, S.J., "Finality, Love, Marriage," *Theological Studies*, 4 (1943), 477-510; Robert O. Johann, S.J., *The Meaning of Love* (Westminster, Md.: Newman Press, 1955); Dietrich von Hildebrand, *Marriage* (London, New York: Longmans, Green, 1942).

¹⁷ Summa, I-II, q. 26, q. 4, corp., citing Aristotle, *Rhetor.*, ii. 4, n. 2.

¹⁸ McAuliffe, *op. cit.*, p. 37, arrives at a definition which does not seem to differ substantially from ours: "Conjugal love is that virtue which effects a union of husband and wife by which they wish to give to each other the marital benefits."

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rational affects are always accompanied by their emotional counterparts. But for purposes of analysis we speak of what is characteristic and essential to the virtue of human love. "Human love is something other than a sentiment; it is essentially—though not exclusively—a procedure of the soul and a willed giving of oneself."¹⁹ It is a love of the rational order, of which only human beings are capable and which specifically befits human beings.

Not that the natural exercise of the sensitive appetites does not also befit human beings. In fact in the case of conjugal love natural instincts of the sensitive order have a most important role to play. Conjugal love is distinctively such, partly because of its essential relationship to sexual union. The love of man and wife to be complete should include not only a rational but a sensitive, sexual inclination to one another. Therefore in restricting the essential concept to the rational appetite it is not meant to imply that sensitive elements are out of place or somewhat suspect in marriage. But these by themselves cannot be the essential thing in human marriage. They are too fleeting and uncontrollable to be of the essence of permanent union. What is usually called "falling in love" can be beautiful and wonderful. It is an ennobling, uniquely human experience. But it cannot be essential to marriage because it is altogether impossible to many couples joined in marriage. Such an experience, if it consists only of sensitive attraction, would hardly merit the noble name of conjugal love at all. There is need to insist on the rational nature of the virtue of love at a time when instinctive impulses and unconscious attractions are exaggerated and over-esteemed.

We speak therefore of a love of the rational order which

¹⁹ Emile Mersch, S.J., *Morality and the Mystical Body*, trans. by Daniel F. Ryan, S.J. (New York: Kenedy, 1939), p. 218.

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to be complete should include sensitive and sexual elements. Our objection to von Hildebrand's concept of conjugal love is not that it includes or even stresses these elements, but that it seems to include as essential, factors which are beyond the control of the partners. For him conjugal love seems to be a unique, ideal experience that happens to some couples but is beyond the reach of others. Furthermore, since he makes conjugal love the primary meaning of marriage (presumably its essential meaning), it would seem to follow that many marriages do not have and cannot have their primary essential meaning.²⁰

Virtue: that is, a natural, permanent disposition of the rational order, though, as just explained, this does not exclude sensitive and sexual appetites from the field of conjugal love. It is called a virtue, first, to distinguish it from mere acts of conjugal love, and secondly, because it is a natural virtue in the ordinary sense of the word. In Christians it is understood that this virtue is supernaturalized through charity and through the grace of the Sacrament.²¹

Man and wife: for it is mutual love. It is a love of friendship primarily, though like every human love it necessarily includes love of concupiscence.²² We say between man and wife because thus the subject of conjugal love is distinguished from other loves of friendship.

Wish to communicate benefits to each other: for all love

²⁰ See above, Chapter 19-20 and Chapter 6, p. 116 f.

²¹ Ludovicus Billot, *De Virtutibus Infusis* (Romae: 1928) I, p. 1, sq. On the superiority of Christian, supernaturalized love over natural love, see St. Francis de Sales, *The Devout Life*, P. III, ch. 38.

²² Cf. Lercher, *Institutiones Theologicae Dogmaticae* (Oeniponte: 1930), II, n. 226, IV, nn. 114, 124, explaining *Summa*, I-II, q. 26, a. 4, corp.: "... motus amoris in duo tendit, scilicet, in bonum quod quis vult alicui, vel sibi vel alii; et in illud cui vult bonum. Ad illud ergo bonum quod quis vult alteri habetur amor concupiscentiae; ad illud autem cui aliquis vult bonum habetur amor amicitiae." And cf. Cajetan, in hunc loc.

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is a tendency to union; it is an active union.²³ Real union is the effect of love. By the very fact that one desires to communicate a good thing to another—principally to another, not to one's self—one's act terminates in that other person. This is affective union. It means a tendency to be one with another to a greater or lesser extent. Hence by the phrase "wish to communicate benefits to each other" we imply that acts of love tend not only to the good thing desired for the beloved but to the beloved himself. Thus it is seen why love is a prerequisite, why it must be the source of the mutual donation of their persons to each other made by the spouses with a view to the acts of conjugal life. Such a donation of self is human and reasonable only as an expression of love.²⁴

Benefits proper to marriage. It is of the nature of love to wish to give good things to the beloved. But we do not think conjugal love is sufficiently distinguished from other loves merely by saying that husband and wife desire to communicate any kind of good thing to each other. Any act of love whatever between husband and wife helps, it is true, to strengthen the conjugal bond and may be made conjugal by the intention of the partners. But it does not seem, for instance, that a Christmas gift which a wife makes to her husband is in itself essentially an act of conjugal love even

²³ *Summa*, I-II, q. 25, a. 2, ad 2; q. 28, a. 1, corp., and ad 2; compare also II-II, q. 27, a. 2, corp.: "Amor . . . importat . . . quamdam unionem secundum affectum amantis ad amatum in quantum scilicet amans aestimat amatum quodammodo ut unum sibi, vel ad se pertinens, et sic movetur in ipsum."

²⁴ Pius XI, *Casti Connubii*, AAS, 22 (1930), 539-592 at 543 and 553, in place of the older phrase "mutua corporum traditio" uses instead: "propriae personae traditio." Individual marriages, he says, come into existence "through the generous donation of one's own person made to the other for the whole of life" (p. 543). And again: "the generous donation of their own person, and the intimate union of their minds" demands indissolubility in marriage, since "true charity knows no ending" (p. 553).

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if it is given lovingly. In other words conjugal love must be distinguished from other love not only in the persons loving and loved, but also by the kind of good or benefit, which through love they desire to give each other. The fact that a man loves his wife in any way is undoubtedly a virtue, and in an imperfect sense can be called the virtue of conjugal love. But we take conjugal love to mean something more. It refers to an interchange of conjugal benefits.

What are these benefits (*bona*) which conjugal love as distinct from every other kind of love wishes to communicate? They can be nothing else than *the acts of conjugal life*; that is, all the acts by which the essential ends of marriage are realized. These are the benefits marriage is calculated to produce (the *bona producenda*); these are the ends for which marriage was instituted.

Considering marriage *in facto esse*, the only assignable elements are the bond, consisting of rights and obligations, and the ends, to which the rights and obligations are directed. In conjugal love proper to marriage as a state it is not by giving the bond to each other that the partners desire to show their love; they have already given that for better or for worse. The essential marriage bond is a benefit undoubtedly, and a conjugal benefit. The elements that make it up are the *bona constituentia* of marriage. But as a good thing lovingly given it pertains to the marriage *in fieri*. When the partners gave their consent to the bond, that was in a certain sense an act of conjugal love. But that act of love is past and gone now that they are married. The bond is there and they can no longer give it or take it away. We are looking at conjugal love which is proper to the state of matrimony, and we say that this love can actuate itself only by a communication of the acts of conjugal life, which realize the ends for which

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the bond was instituted. These are the *bona producenda* of marriage.²⁵

No acts could more perfectly serve the purpose of love than these. In the marriage act when properly performed there is a living union of the most intimate and comprehensive kind—a union of body and mind, of sense and heart. It is an act of self-surrender in which two become one flesh, one principle of generation. Love desires union with the beloved by a communication of good and by a donation of self. The marriage act which makes two in one flesh is a unique expression of this love and a unique realization of this desire for union, while always retaining its primarily procreative character.

Likewise the acts of mutual help are by their very nature suited to be acts of love. We have not attempted to define exactly what they are, but are inclined to give a broad meaning to the concept. In any case it will be admitted that mutual help includes the acts of cohabitation and the acts by which the lifelong partnership and the rearing of the children are realized. It means a sharing of each other's lives in this work to which the very instinct of parental love impels father and mother. Are not these acts eminently suitable expressions of the virtue of love—which seeks the presence of the beloved, and desires to benefit the beloved even at the expense of self?²⁶

²⁵ This can all be applied, *mutatis mutandis*, to the *tria bona* understood as St. Augustine frequently understood them, i.e., inasmuch as they include the actualization of the ends of marriage. For this meaning of the *tria bona* see Ford, *The Validity of Virginal Marriage* (Worcester: Harrigan Press, 1938), pp. 38, 39; St. Thomas, *Suppl.* q. 49, a. 3, corp.

²⁶ St. Thomas, *Summa*, II-II, q. 25, a. 7, corp., (citing Aristotle, *Ethic.*, lib. 9, c.) "Unusquisque enim amicus primo quidem vult suum amicum esse et vivere; secundo vult ei bona; tertio operatur bona ad ipsum; quarto convivit ei delectabiliter; quinto concordat cum ipso quasi in eisdem delectatus et constrictatus." And cf. II-II, q. 27 a. 2, ad 3; q. 31, a. 1, corp.

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Up to this point we have been speaking chiefly of benefits proper to marriage as a natural institution. But if Christian marriage is looked at as the supernatural vocation of the partners then their mutual interior sanctification (since it is in some sense the "primary cause and reason of marriage") is also a benefit proper to marriage. All Christian love must include the desire for the sanctification of the neighbor. The sanctification of the married couple is specifically conjugal, a benefit proper to marriage, because of its peculiar *mutuality*. By reason of their state in life *they are called to achieve sanctity together*. The bond of marriage unites them so intimately that even their pursuit of personal, supernatural perfection is a mutual enterprise. McAuliffe develops at considerable length the proposition that this mutual sanctification is the object of conjugal love.²⁷ We do not deny this conception. But since we consider it a *finis operis* of marriage as a supernatural institution and vocation, we include it preeminently among the benefits proper to Christian marriage.

Since there are no other assignable "benefits proper to marriage" and since the acts of conjugal life are eminently appropriate as expressions of conjugal love, we conclude that these acts are the benefits which the virtue of conjugal love of its nature seeks to communicate.

This is our concept or definition of the essential meaning of the virtue of conjugal love.

THE SENSE IN WHICH CONJUGAL LOVE IS ESSENTIAL

Is conjugal love thus understood essential to marriage? The answer to this question must of course be in the negative. That is, the *actual* virtue of conjugal love is not essen-

²⁷ Op. cit. Ch. III, pp. 86-112.

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tial to marriage. How many thousands of marriages there are in which we find no trace of it. Yet they are real marriages. The actual virtue of conjugal love is no more essential to marriage than the acts of conjugal life themselves. Just as there can be true marriage when the acts of conjugal life are absent, so also there can be true marriage when the love of which these acts should be the expression is absent.

But on the other hand, just as there can be no true marriage without the fundamental right and obligation to the acts of conjugal life, so also *the fundamental right and obligation to the virtue of conjugal love is essential to marriage.*

It is enough to consider these acts of conjugal life in themselves to see that they must suppose the virtue of conjugal love if they are to be performed in a manner worthy of human dignity. Above, when trying to give the distinguishing note of conjugal love, we said that supposing there is such a virtue it could find no more appropriate expression than in the acts by which the ends of marriage are realized. Now we turn about and argue the other way and say that in the supposition that there is a right and obligation to these acts, there must also be a right and obligation to practice them lovingly. In other words they are not merely appropriate expressions of love, but they are necessarily expressions of love. That is, they are so typically acts of love that one cannot imagine an obligation to them which does not presuppose them to be acts of the virtue of love.

We do not say that it is impossible that a man or a woman perform these acts without love. It is possible to perform the marriage act, and the acts of lifelong mutual help merely externally and with inner reluctance—and more than reluctance, with inner hatred.

But we say it would not be in keeping with the personal

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dignity and rational nature of man to say that he has the right and obligation to these acts except as proceeding from the virtue we have described. The acts of married life are to be performed in a manner consonant with the human dignity of the partners. They are not mere animal acts. They are not merely the legal fulfillment of a contractual obligation. They are such an intimate fusion of two human personalities and they connote such a complete surrender of person to person that they cannot be conceived as fully human acts unless they are conceived as acts proceeding from the love of friendship and benevolence defined above. And since marriage makes these acts the object of a fundamental right and obligation, so also it must make the virtue from which they proceed the object of a fundamental right and obligation. Hence we say that the fundamental right and obligation to the virtue of conjugal love is essential to marriage.

Let us recall a statement made by Zeiger in connection with marriage *in fieri*:

Matrimonial consent differs greatly from other contracts in its object. A man and woman deliberately and freely give themselves to one another for a complete intimacy of their whole life, an intimacy both bodily and interior, and forever and exclusively. . . . Such a surrender, if considered fully in itself, cannot but suppose at least a certain inchoate and imperfect love; while the free consent to that surrender is an external expression of that internal love—it is the love itself.²⁸

We apply this same conception to marriage *in facto esse*—which essentially consists in rights and obligations—and paraphrasing the words above, say: the right and obligation

²⁸ Art. cit., p. 47*.

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to such a surrender as the acts of conjugal life involve cannot but suppose the right and obligation to at least some virtue of conjugal love. If it is true of the marriage *in fieri* it is also true of marriage *in facto esse*. For the acts from which the argument is derived are the same in both cases.

One may conclude, incidentally, that there is a grain of truth in the statement of certain marriage reformers (as there is often a grain of truth in error): marital intercourse is immoral when love has ceased. It is true in the sense that the acts of conjugal life are not performed in a manner worthy of human dignity unless they proceed from love.²⁹

But the statement is false in the concept it has of love. For these extremists generally mean instinctive, sexual attraction, if not exclusively, at least principally. Their principle is based on the idea that love comes and goes as it will. It is not something that man controls. He falls into it and hopes that it will last.

Our concept of love, on the contrary, though it does not deny the importance of instinctive, physical, sensitive and sexual factors, is a love of the rational order. These other factors may have been the occasion which gave rise to the love we speak of, and their cultivation is certainly of immense help in conserving and fostering it as far as the natural order is concerned. But what is essential to conjugal love is voluntary. It is a virtue. And just as it is within our power to practice the virtue of charity towards our neighbors, all of them, so it is possible for man and wife, despite the vagaries of passion and sentiment, with the help especially of the grace of the sacrament, to practice the essential virtue of conjugal love. There is an Italian proverb

²⁹ This does not mean that if they "fall out of love" there is no longer an obligation to sexual union. It means that if they do not possess the virtue of conjugal love, they are bound to acquire it.

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which says: "You cannot command love."³⁰ Nevertheless there is a law of God which commands it. For the love of God is the greatest and first commandment, and the second is the love of the neighbor.

Another consideration will help us to establish our point. The fundamental right and obligation to acts of mutual help is essential to marriage. Now although there may be some doubt as to the extent of the concept "mutual help," there is no doubt that it at least includes the idea of conjugal love. Both theologians and canonists explain mutual love as part of mutual help or mutual help as part of mutual love. Cappello, for instance, says that the secondary end of marriage, essential and intrinsic to it, is mutual help, "not only in the care of the household but especially in mutual love."³¹ It is superfluous to multiply quotations.

Casti Connubii tells us that the outward expression of love in the home comprises not only mutual help, but in Christian marriages even the care of one another's interior perfection;³² and it puts cultivation of mutual love on a par with mutual help as a secondary end to marriage: "For both in matrimony itself and in the use of the conjugal right there are secondary ends, such as mutual help, the fostering of mutual love, and the quieting of concupiscence . . ."³³

Now when authors and documents speak of love as a part of mutual help it is not to be supposed that they intend that among the acts of mutual help there are also acts of love—as if every so often a man ought to present his wife with an act of love. Nor when speaking of love as part of mutual help do they intend to exclude the marriage act itself from

³⁰ "L'amore non si comanda."

³¹ Felix Cappello, *De Matrimonio* (Rome: Marietti, 1961) n. 8.

³² AAS, 22 (1930), 548.

³³ AAS, 22 (1930), 561.

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the concept of mutual help. It is often included, and in the passage just quoted from *Casti Connubii* it is the marriage act which is said to have the cultivating of mutual love as one of its ends. They conceive conjugal love as something that goes along with all the acts of conjugal life; it is a permanent disposition that pervades these acts. *Casti Connubii* puts it explicitly: “. . . this love of husband and wife which pervades all the duties of married life and holds pride of place in Christian marriage.”³⁴ And again: “By this same love it is necessary that all the other rights and duties of the marriage state be regulated . . .”³⁵

Our argument then, proceeds from the common opinion of authors and from the teaching of the encyclical, from which sources we draw a conclusion that the theologians have not drawn explicitly: if the acts of mutual help are essential to marriage and if love pertains to these acts as an all-pervading attribute, then the love is essential to marriage just as the acts are; that is to say, the fundamental right and obligation to the acts essentially implies the fundamental right and obligation to the virtue of love. Consequently no satisfactory essential definition of marriage can be formulated which does not include conjugal love.

This point of view is not essentially different from what has been proposed in the past. Everyone has always been agreed as to the obligation which the partners have to love one another in marriage and to perform conjugal acts lovingly. We have merely tried to give a definition of what seems essential to that virtue, and then to show in what sense the virtue is essential to marriage. It is the fundamental right and obligation to it that is essential.

³⁴ AAS, 22 (1930), 547.

³⁵ AAS, 22 (1930), 549.

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CONJUGAL LOVE AS AN END AND AS A "PROPERTY"

Casti Connubii speaks of conjugal love explicitly as an end and seems to speak of it as a property in some sense. The fostering of conjugal love is explicitly enumerated as a secondary end of marriage and of the marriage act along with mutual help and the remedy for concupiscence.³⁶ Consequently we believe conjugal love should be considered both an end and a "property" of marriage.

We have already explained that the various ends are not always sharply distinguished from one another. The wording of the encyclical joins the fostering of mutual love to the concept of mutual help, but at the same time makes it one of the ends of the marriage act. Acts of conjugal love, therefore, may also be acts by which the other ends of marriage are attained and vice versa. There seems to be no good reason for departing from the usage and teaching of the encyclical. When we enumerate the ends of marriage, conjugal love should receive the same explicit mention as the other secondary ends. The place accorded conjugal love by the encyclical should not be denied it by ecclesiastical writers.

Furthermore, the encyclical says that conjugal love "pervades all the duties of married life," that it "holds pride of place in Christian marriage," and that "by this same love it is necessary that all the other rights and duties of the marriage be regulated."³⁷ These words indicate that conjugal love is in a certain sense a property of the acts of conjugal life. It is not a property of the marriage bond itself in the sense that unity and indissolubility are. It is an essential end of the marriage bond, a goal to be achieved. But it is an essential property of the acts of conjugal life, because just as marriage contains a fundamental right and obligation to the

³⁶ AAS, 22 (1930), 561.

³⁷ AAS, 22 (1930), 547-549.

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performance of these acts, so it contains a fundamental right and obligation to the loving performance of them.

One may object that people can and often do get married without loving each other. Who would say that a young man who married a rich woman for her money loves her? Who would say that a prince who married for reasons of state, because he must, loves his bride? Do not common sense and the man on the street agree that this is something the very opposite of love? If you were to ask the young man or the prince: do you love her? he would have to answer: No.

The rejoinder to such young men would be: but you ought to. For we are talking about a right and obligation that is essential to marriage. We do not say that the love itself is essential. Furthermore we have to repeat: we are not talking of passionate love or sentimental romance. The encyclical *Casti Connubii* says of the marriage reformers: "These enemies of marriage go further, however, when they substitute for that true and solid love which is the basis of conjugal happiness a certain vague compatibility of temperament. . . . What else is this than to build a house upon sand?"³⁸ Our answer to the objection, then, is that we are not talking of sentimental romance. If the prince and the young man do not consent to that minimum of love which we conceive to be the true and solid love of the encyclical, whereby they desire to communicate to each other the benefits of conjugal life, then their intention in marrying is usually sinful, and theoretically speaking, possibly invalid.

Usually sinful, because to have an intention contrary to one's obligations in marriage is sinful. But we put the proviso "usually" because one must not lose sight of the fact

³⁸ AAS, 22 (1930), 568.

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that it is only the fundamental right and obligation to conjugal love that we consider essential to marriage. There are occasions in married life when the proximate obligation to practice this virtue ceases, for instance when the partners are legitimately and permanently separated, or when both partners enter religion. In these cases they are still bound to love each other, it is true, but as Christians, not as spouses, not conjugally.

Possibly *invalid*, theoretically speaking, because if our conclusion is valid, then a condition excluding essential conjugal love from the contract, or an intention to exclude it, if it really meant to exclude even the fundamental obligation to such a virtue, would be against the substance and would invalidate marriage. But such a case is in practice chimerical. For practical purposes such conditions would be exclusive of the right to the acts of conjugal life in themselves, not against the right to them as proceeding from the virtue of conjugal love.³⁹

Someone might object that by the time we have explained our position there is a rather thin sense in which we make love essential to marriage and a rather well-watered sense in which we understand love itself. But we have made love just as essential as those all-important elements, the marriage act and the acts of mutual help. As for our concept of love, it is that of St. Thomas and the scholastic tradition. We consider it the "true and solid love" of the encyclical.

³⁹ Can one imagine in practice a condition like this: I marry you on condition that our acts of conjugal life shall not proceed from a desire to communicate to one another the benefits proper to marriage? This, or any equivalent of it, would be preposterous. But we mention the question of conditions *contra substantiam* merely to show that when we say that the right to conjugal love is essential, we mean it in just the same way as when we say that the right to the acts of marriage are essential. That is, so essential that "if anything to the contrary were expressed in the consent that makes the marriage, it would not be a true marriage." (*Casti Connubii*, AAS, 22 (1930), 542, citing St. Thomas, *Suppl.* q. 49, a. 3).

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Our explanation receives, we think, strong confirmation from the beautiful words with which *Casti Connubii* speaks of conjugal love. The encyclical says that love is a part of conjugal faith; it is *demanded* by conjugal faith. Conjugal faith, of course, is essential to marriage. Furthermore, it says that it is necessary that this love regulate and pervade the other rights and duties of marriage. From this we have concluded that there is a sense in which love is essential to marriage, and we offer our explanation of it in the belief that it fits aptly the teaching of the encyclical:

This conjugal faith, however, which is most aptly called by St. Augustine the "faith of chastity," blooms more freely, the more beautifully, and more nobly when it is rooted in that more excellent soil, the love of husband and wife, which pervades all the duties of married life and holds pride of place [*principatum nobilitatis*] in Christian marriage. For matrimonial faith demands that husband and wife be joined in an especially pure and holy love, not as adulterers love each other, but as Christ loved the Church. This precept the Apostle laid down when he said: Husbands love your wives as Christ also loved the Church:—which of a truth He embraced with a boundless love, not for the sake of His own advantage, but seeking only the good of His spouse.

The love then, of which we are speaking is not based on the passing lust of the moment nor does it consist in pleasing words only, but in the deep attachment of the heart which is expressed in action, since love is proved by deeds. This outward expression of love in the home comprises not only mutual help but must go further, indeed must have as its primary purpose that man and wife help each other day by day in forming and perfecting themselves in the interior life; so that through their partnership in life they may advance ever more and more in virtue, and above all that they may grow in true love towards

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God and their neighbor, on which indeed “depends the whole law and the prophets.” For all men, of every condition and in whatever honorable walk in life they may be, can and ought to imitate that most perfect example of holiness placed before God and man, namely Christ Our Lord, and by God’s grace to arrive at the summit of perfection, as is proved by the example of many saints.

This mutual interior formation of the partners, this earnest desire of perfecting one another, can be said in a very true sense, as the Roman Catechism teaches, to be the primary cause and reason of marriage—if only marriage is taken, not strictly as an institution for the proper procreation and rearing of children, but in a broader sense, as a sharing, a community, a union of their whole life.

By this same love it is necessary that all the other rights and duties of the marriage state be regulated so that the words of the Apostle, “Let the husband render the debt to the wife, and the wife also in like manner to the husband” express not only a law of justice but a norm of charity.⁴⁰

⁴⁰ AAS, 22 (1930), 547-549.

7



The Essential Subordination of the Secondary Ends

WE HAVE SEEN that in modern Protestant thought parenthood and companionship rank equally as purposes of marriage. For Catholics, however, the subordination of the secondary ends is a point of teaching so well established in the ecclesiastical sources that when Doms, Krempel and others questioned it their theories were soon rejected by the Church.

This essential subordination of the secondary ends is expressed traditionally by the terms "primary and secondary ends." The purpose of the present chapter is to indicate what these terms do and do not mean, thereby explaining, partially at least, what this essential subordination consists in. We say partially because there are problems in this conception which invite deeper studies, philosophical and theological, not only of the purposes of marriage, but of the meaning and purposes of sexual differentiation in human nature itself.

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Perhaps it will be clarifying to begin by indicating what the terms primary and secondary do not mean.

In the first place, the essential subordination of the secondary ends does not mean that they are less essential than the primary ends, if the word essential is understood as we understand it. We call essential that without which marriage cannot exist. Among the ends of marriage as a natural institution, among its intrinsic *finis operis*, one end cannot be more essential than another in this sense. Either marriage can exist without being objectively ordered to mutual help and the other secondary ends or it cannot. If it cannot, then mutual help is an essential end. There can be degrees of importance. But there can be no degrees of essentialness. Essentialness as we have defined it does not admit of degrees.¹

In the second place, the essential subordination does not mean that the secondary ends are subordinated to procreation and rearing of children in such a way that they have value and legitimacy only when used as a means to attaining the primary ends. The secondary ends are really ends, not just means. That is why Wynen can speak of the secondary end as having "a certain independence" from the primary end.² Palmieri says that if a means could be used only for the purpose of achieving a given end, that end would not be the primary end; it would be the only end.³

It cannot be denied that this kind of subordination seems to have been part of St. Augustine's theory of marriage. But theologians nowadays, and for a long time past, in their

¹ St. Thomas, Suppl., q. 49, a. 3, corp., uses the terms "more essential" and "most essential," but with a difference of context and of terminology.

² *Sacrae Romanae Rotae Decisiones* (Romae: Typis Polyglottis Vaticanis, 1954), vol. 36, Decisio VI, coram Arcturo Wynen, 22 Jan. 1944, pp. 55-78 at p. 70, (n. 30, 4°); reported also in AAS, 36 (1944), 179-200 at 193.

³ Dominicus Palmieri, *Tractatus de Matrimonio* (Rome: 1800), Thesis II, n. V, p. 14.

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theoretical exposition of the ends of marriage, and in their practical teachings on the morality of conjugal intimacy, have broken with the idea that the secondary ends are subordinate to the primary in the sense that they can be justified only when they are a means to the attainment of the primary ends. It is now universally recognized that the secondary ends, while remaining essentially subordinate, have a certain quasi-independence, a certain value of their own, and can be legitimately pursued even when the primary end is completely impossible of actual fulfillment, or when for sufficient reasons its fulfillment is deliberately avoided. For instance, the partners may knowingly contract and knowingly make use of a sterile marriage. Or, given proportionately serious reasons, they may avoid the realization of the primary end by systematically restricting their intercourse to sterile periods.

Pius XII authoritatively ratified this theological position in the Address to the Midwives.⁴ His teaching had been preceded by the authoritative statement of Pius XI in the encyclical *Casti Connubii*.⁵

It is clear then, that the terms primary and secondary do not mean that the secondary ends are subordinate in the sense that they have legitimate value only as means to the attainment of the primary end.

Thirdly, primary end does not mean that procreation is or should necessarily be uppermost in the minds and intentions of the contracting parties generally, or that they are under obligation to choose it as the purpose most important to them, that is, primary as far as they are concerned. They need only intend marriage as it is, and respect the obligations that go with it. Marriage "as it is" is related to all its

⁴ See Chapter 18.

⁵ AAS, 22 (1930), 539-592 at 561.

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ends essentially and objectively; and is related primarily in some sense to procreation.

In what sense? What does it mean to call procreation a primary end or purpose, and to say that the other ends are essentially subordinate to it? The primary end is called primary because it is *more important*, and *more fundamental*.

If we look at marriage as a natural and divine institution, then in the intention of God and nature procreation is seen to be an end of greater importance or greater value than mutual help, conjugal love, and the remedy for concupiscence. Perhaps it is a little rash to speculate on the comparative importance of purposes in the mind of God. Some seem to think we have no right to do so. On the other hand, it is not impossible that in a natural institution like marriage nature herself has shown her hand, and reason itself can give us a clue as to what is more important, the personal purposes, or the purposes that serve the species. Undoubtedly procreation and rearing of children are of more importance to the species. Likewise it is of more importance to human society in general, and hence to the law, both civil and canon. One must therefore, for valid philosophical reasons, call procreation primary. Since the *good of the species* is more important to nature than the good of individuals, procreation and rearing of children is a more important end of marriage than mutual help, conjugal love and the remedy.

But for the defense of the Catholic position it does not suffice to say merely that the primary ends are more important. "Primary and secondary are not merely synonyms for *more important* and *less important*."⁶ The secondary

⁶ Romaeus W. O'Brien, O. Carm., "The Primary End of Marriage and the Validity of Marriage," *American Ecclesiastical Review*, 135 n. 4 (1956) 272-274. Cf. Francis J. Connell, C.S.S.R., "The Catholic Doctrine on the

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ends presuppose, that is, depend on or are subordinate to the primary ends in a sense in which the primary ends do not presuppose or depend on the secondary ends. In a word the primary ends are more fundamental. This conception reflects basic attitudes in Catholic thought not only with regard to the purpose of marriage but with regard to the meaning and purposes of the sexual differentiation in human nature itself. Canon Leclercq expresses it thus:

For men to be perfect and happy, they must first of all be men. Consequently, since the union of the sexes ensures on the one hand the happiness of the couple, and, on the other, the continuation of the human race, the second of these effects is more important [and on this reasoning more fundamental] than the first and has to be accepted both as the primary purpose of marriage and as the very reason for sex differentiation itself.⁷

This basic Catholic position has been variously explained and defended by theologians and canonists.⁸ We content

Ends of Marriage," *Proceedings of the Foundation Meeting of the Catholic Theological Society of America*, (New York: 1946), 34-45 at 41: "Not only are the personal benefits inferior in importance to the social benefits, but they are subordinate to them. The blessings involved in life partnership and in the most intimate relationship possible between two human beings—mutual love and assistance, comfort and strength in the trials of life, the lawful relief of concupiscence—these, according to the plan of the Creator, are all ordained to an end outside of themselves, the welfare of the human race. In other words, the personal benefits of matrimony are intermediate ends—desirable for their own sake, but ultimately desirable as beneficial to society. This points the way to a basic principle which must be taken into account in every scientific discussion of matrimony by Catholics—that marriage is primarily a social institution, established by God for the common good of men whom He has created to His own image and likeness."

⁷ Jacques Leclercq, *Marriage and the Family*, trans. by Thomas B. Hanley, O.S.B. (New York: Pustet, 1941), p. 12. It is the thesis of O.A. Piper, *The Biblical View of Sex and Marriage* (New York: Scribner's, 1960) p. v., that we should begin our ethical investigation of sex with the nature of sex itself, and not with the institution of marriage.

⁸ See, for example, Dominicus Palmieri, *Tractatus de Matrimonio* (Rome: 1880), Thesis II, n. V, p. 14, who has an unusually searching

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ourselves with adducing one example, from a canonist, of the kind of reasoning which is used to confirm this position.

The Rota judge Monsignor Arthur Wynen, deciding a case in 1944, analyzed at length the essential subordination of mutual help to the primary end from the standpoint of canon law. His explanation is of special interest and importance because, contrary to usual custom, soon after the case was decided, it was published in the *Acta*. We have seen that in Wynen's view, although mutual help is an essential, intrinsic end (*finis operis*) of marriage, the right to this mutual help is not considered to be one of the constituting elements of the essential object of consent. The validity of his analysis, however, does not, in our opinion, depend on this part of his theory. The following excerpts are from his opinion:

. . . Concerning the relation of the secondary end of matrimony to the primary end. Mutual help and a total sharing of life can occur between two persons of opposite sex outside marriage, also, either as a mere matter of fact, as between brother

analysis of the essence of marriage and of the relation of the secondary ends to it; Francis W. Carney, *The Purposes of Christian Marriage* (Washington: Catholic University Press, 1950), pp. 59-69, citing several authors on this point; Rudolph Geis, *Principles of Catholic Sex Morality* (New York: Wagner, 1930), p. 45, who argues thus: "Procreation can be secured in no other way than by means of sexual activity, but the reinforcement of spiritual love and the allaying of concupiscence may be brought about in many other ways. Consequently, the connection of sex with procreation is closer and more essential than with the individual good of the spouses. Procreation stands out as the primary end of the sex life, whilst the other results are of a secondary and subordinate nature. The former is invariable and imbedded in the structure of nature, the latter are variable and subjectively conditioned. Childbearing is not the whole of marriage, but it is central." See also Bernard J. F. Lonergan, S.J., "Finality, Love, Marriage," *Theological Studies*, 4 (1943), 477-510, especially p. 505, note 73, whose profound "outline" (as he calls it) of the complex interrelationships of the ends of marriage at the levels of nature, human nature and supernature, deserves further study and development.

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and sister living together, or in virtue of an explicit agreement to provide mutual help to one another. Therefore, inasmuch as mutual help and common life are said to be proper to matrimony and are its secondary *finis operis* they ought to be viewed in the light of some special property by which they are distinguished from any other common life involving mutual help. They are thus distinguished by their *internal relation to the primary end*, by which end conjugal union is set apart from every other human society.

. . . This relation of the secondary end to the primary is found first in the *origin* of this end and in the origin of the corresponding right to mutual help;—which is demonstrated as follows: the immediate and essential object of the matrimonial contract is the exclusive and perpetual right to the person of the partner with a view to acts which are *per se* apt for the generation of offspring (can. 1081, § 2). There derives from this right as a natural consequence and complement, a right to all those things without which the right of generating—and consequently also of rearing—the offspring cannot be realized in a manner befitting the dignity of human nature. Now then, the right of generating and rearing offspring in the aforesaid manner cannot be realized unless to this principal right there accedes a right to mutual help, including a right to the sharing of life or a right to cohabitation, to a common bed and board, and to help in all life's needs. Be it noted, however, that the question here is not about the actual providing of the help itself, but of a *right* to mutual help; for just as the *principal* object of the matrimonial contract is not “offspring” but “the right” to generate offspring, so the *secondary* object is not “the mutual help” itself, but “the right” to it. . . .

. . . From what has been adduced the following conclusion is to be drawn. Just as the *right* to the sharing of life and to total mutual help is intrinsically dependent in its origin on the principal *right* to generative acts, and not vice versa; and just as among the matrimonial *rights* there exists a definite order

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and a definite dependence: so also the ends of matrimony, to which those rights are ordered and for which they are granted by nature, are arranged in a certain order and connected with one another by reason of their origin. Having established the principal and primary end, the Author of nature established in marriage as an institution of nature a secondary, complementary end so that it should be and appropriately could be realized in and through the same institution which is called matrimony. . . .

. . . The above described order of dependence and subordination is verified not only in the origin of the secondary right, which is destined to the attainment of the secondary end and by which the attainment is *per se* assured, but the same order is apparent also in marriage considered "*in facto esse*."

Indeed every man, simply because he is of his very nature "a social being," needs the help of others; and he finds this help both because he is a member of human society in general, and of a determinate civil and domestic society in particular. In this help which is common to all there is included also that help and completion which one sex (even prescinding from all carnal desire and activity) receives from the character of the opposite sex; for human society is made up of men and women mutually affecting one another. But this kind of common help cannot constitute a *finem operis* of matrimony; to constitute the latter it has to be further determined by some *specific element*, from which it may be evident why the Creator has endowed matrimony with "mutual help" as a *finis operis*. This specific element again is and must be *the relation to the primary end and to the principal right*. The spouses, that is, from the very nature of matrimony are linked to the primary end of this institution because they have acquired through matrimony the right and the destination of becoming "authors of new life," by procreating and rearing children, even if *de facto* they do not become such. . . .⁹

⁹ *Sacrae Romanae Rotae Decisiones*, vol. 36, decis. 6, p. 65 f. (n. 21

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A sterile marriage does create a difficulty. But perhaps it is not precisely the difficulty of showing how procreation can be its primary essential end, but rather the difficulty of showing how procreation can be an essential end of such a marriage at all. We have previously attempted to explain this point by saying that an individual marriage which is sterile remains essentially ordered to procreation as an end inasmuch as the marriage bond consists in a fundamental right to acts which are *per se* procreative. The marriage is thus fundamentally procreative by its very nature.

It is true that it may be physically impossible for the sexual acts of a given marriage to result in actual procreation. But philosophically speaking this impossibility is *per accidens*. The acts remain *per se* procreative because they are the typical acts of organs whose specific, objective purpose is procreative. They are acts which in other persons, or in these persons at other times, normally result in procreation. We say their failure as procreative is *per accidens* in much the same way that we would say the inability of a color blind person to tell certain colors is *per accidens*. His eyes are objectively and essentially destined for distinguishing these colors even if it would take a miracle to achieve this result. A similar point was made by Pius XII when he asserted that procreation remains the primary end even of a sterile marriage, de-

f.); reported also in AAS, 36 (1944), 188 f. This excerpt argues to the essential subordination of mutual help. The essential subordination of the remedy for concupiscence is shown by the fact that it is principally attained by means of acts which are *per se* procreative, and whose fundamental procreativity must never be sacrificed for the sake of the remedy; see above-quoted decision, p. 64, n. 17; AAS, 36 (1944), p. 187, n. 18. As for the essential subordination of conjugal love, whether it is looked at as an aspect of mutual help, or of the marriage act, or of the remedy, it is distinctively matrimonial by reason of its relationship to and dependence on the primary end; cf. Michael F. McAuliffe, *Catholic Moral Teaching on the Nature and Object of Conjugal Love* (Washington: Catholic University Press, 1954), pp. 45, 46.

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claring that the essential subordination of the secondary ends "holds true for every marriage even if it bear no fruit, just as it can be said of every eye that it is destined and constructed for seeing even if in certain abnormal cases, by reason of special conditions, either internal or external, it will never be able to attain visual perception."¹⁰

Once granted that procreation is an essential end even of a sterile marriage, the defense of its objective character as a primary end does not raise new or special problems. The procreative finality of sterile marriages as of fertile marriages is more fundamental to them than their other purposes. Therefore, procreation is said to be *per se* their primary end. But they are objectively ordered to procreation only in the limited, technical sense described above. And since all this seems to involve fundamental assumptions as to the meaning of human sexuality, we would welcome further investigation of this conception by Catholic theologians.

In the practical moral order the subordination of the secondary to the primary ends has its most common applications where the use of marriage is concerned. The marriage act may be used for the attainment of the secondary ends, but the partners are always bound first, to respect the physical integrity of the procreative act and faculty (that is, they must not directly deprive them of their *per se* procreative character) and, second, they are bound not to neglect the affirmative obligation to actual procreation which is *per se* a part of marriage.

But it would seem that it is not precisely the violation of a finality which is primary, but the violation of a finality which is essential and intrinsic, which makes contraception intrinsically immoral. A Protestant commentator says that even if procreation were the primary end of marriage, which

¹⁰ Address to the Midwives, AAS, 43 (1951), 835-854 at 849.

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it is not, contraception would not be immoral.¹¹ We are inclined to say, that even if procreation were not the primary end of the marriage act, which it is, contraception would still be immoral. For we consider that the secondary finality of the marriage act is essential and intrinsic to it as it is to marriage itself, and to violate such finality would also be intrinsically immoral. But since parenthood is the primary end of marriage and of the marriage act it can be concluded a *fortiori* that it is immoral to use the act for its secondary, essentially subordinate ends, while deliberately mutilating its basic character as a *per se* procreative act.

Papal documents and theological reasoning, as we shall see, have uniformly derived the immorality of contraception from the finality of the sexual act and sexual faculty. To this act and this faculty is attributed a special inviolability against human interference. To destroy directly the physical integrity of the marriage act, or to deprive directly the procreative faculty of its power of generating new life, is an attempt to exercise a dominion which we do not possess. The stewardship God has given us over our bodies does not extend that far. This would still be true even if procreation were a secondary intrinsic purpose of marriage and of the marriage act. Consequently further arguments against contraception could be based on its opposition to the secondary ends of marriage.¹² Attributing a truly essential place to the

¹¹ Richard M. Fagley, *The Population Explosion and Christian Responsibility* (New York: Oxford University Press, 1960), p. 221. Compare Joseph J. Farraher, S.J., "Notes on Moral Theology," *Theological Studies*, 21 n. 4 (Dec. 1960), 581-625 at 605: "Nor does our argument against contraception stem necessarily from placing the procreation of children as the primary purpose of sexual function and the fostering of mutual love as secondary. It is our belief that to go directly contrary to either natural end is wrong. One need not always achieve both ends, but one may never act directly contrary to either one."

¹² Dietrich von Hildebrand, "Marriage and Overpopulation," *Thought*, 36 (Spring, 1961), 81-100 at 96 f.; Stanislas de Lestapis, S.J., *Family Plan-*

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secondary ends does not deprive them of their essential subordination, nor is it a logical step in the direction of admitting contraception.

MUTUAL SANCTIFICATION THE "PRIMARY CAUSE AND REASON"

We have already alluded to the controversial passage in *Casti Connubii* which speaks of the mutual interior formation, i.e. the mutual sanctification, of the partners as being in a certain sense the primary cause and reason of marriage:

This mutual interior formation of the partners, this earnest desire of perfecting one another, can be said in a certain very true sense, as the Roman Catechism teaches, to be the primary cause and reason of marriage—if only marriage is taken not strictly as an institution for the proper procreation and rearing of children, but in a broader sense as a sharing, a community, a union of their whole life.¹³

Both Doms and Krempel used these words to bolster their rejection of procreation and rearing of children as the primary end of marriage. Certain aspects of the passage still remain obscure and probably always will, but the following may be to some extent clarifying.

This much can be said with certainty, even a priori. *Casti Connubii*, published only a dozen years after the new Code

ning and Modern Problems (New York: Herder and Herder, 1961), pp. 147 ff.; Paul M. Quay S.J., "Contraception and Conjugal Love," *Theological Studies*, 23, n. 1 (March, 1961), 18-40; Joseph S. Duhamel, S.J., "The Catholic Church and Birth Control," in: *In the Eyes of Others*, edited by Robert J. Gleason, S.J., (New York: Macmillan, 1962), pp. 107-128; and also as pamphlet, *The Catholic Church and Birth Control* (New York: Paulist Press, 1963).

¹³ AAS, 22 (1930), 539-592 at 548. This passage was omitted from the English and from some other vernacular translations when they first appeared. How this accident happened nobody seems to know.

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of Canon Law, would not contradict the Code. A document epitomizing the teaching of the past would certainly not break suddenly with the traditional Catholic teaching on such a well-established point. Furthermore it would be improper to interpret *Casti Connubii* in such a way as to make it contradict itself. It quotes canon 1013 § 1, stating explicitly that "the primary end of marriage is the procreation and rearing of children," and in other passages speaks clearly in the traditional manner of the primary end both of marriage and of the marriage act.¹⁴

One of the more obscure points of the above passage is the distinction between marriage taken in the stricter sense and in the broader sense. In 1931 Vermeersch said that the broader sense here means a more "comprehensive" or extended concept of marriage, which does not exclude marriage in the strict sense but rather supposes it.¹⁵ (He wanted to forestall any attempt to conceive as possible a marriage without its primary end). But in 1932 he also asserted that the total community of life mentioned here is not something over and above the mutual gift of themselves which the spouses have made to one another with a view to the procreation and rearing of children "since it began and sprang from the mutual giving of self, and at the same time is its crown and glory."¹⁶ Then in 1933, to add to the confusion, Vermeersch says, in a puzzling phrase, that this total com-

¹⁴ *Ibid.* at p. 546 and e.g. p. 561. Compare also Pius XII, Address to Midwives, AAS, 43 (1951), 835-854, at 848, 849: "Now the truth is that marriage, as a natural institution, by reason of the will of the Creator does not have as its primary and intimate end the personal perfection of the spouses, but the procreation and rearing of new life. The other ends, although they also are intended by nature, are not in the same rank as the first, and much less are they superior to it, but are essentially subordinate to it."

¹⁵ A. Vermeersch, S.J., "Annotationes" (on the Encyclical *Casti Connubii*) *Perodica*, 20 (1931), 42-68 at 47.

¹⁶ *What is Marriage? A Catechism According to the Encyclical Casti Connubii* (New York: America Press, 1932), p. 24 (n. 59).

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munity of life is "another natural, not secondary end" of contracting.¹⁷

Whatever this may mean, and whatever the reason for introducing this distinction into the text in the first place, we think that both the stricter and the broader conceptions of marriage in the Encyclical are conceptions of marriage properly so called. They both refer to essential things in marriage. For the description of marriage in the broader sense parallels very closely the classical definitions of marriage in canon law and early scholasticism, and these are essential definitions.¹⁸ At least we do not believe that this distinction can be used to imply that a total community of life, or mutual help as a secondary end, is not essential to marriage.

Another point of obscurity is whether the "primary cause and reason" in this passage refers to a *finis operis* or a *finis operantis* of matrimony. Authors have divided on this point.¹⁹ We favor the view that like the passage in the

¹⁷ *Theologia Moralis* (Rome: Gregorian University Press, 1933), editio 3a of vol. IV (*De Castitate*), n. 41, margin.

¹⁸ The section of the Catechism of the Council of Trent on which this paragraph of the Encyclical is based defines marriage (and the context clearly shows that here we have an essential definition of marriage properly so called) as follows: "*Definitio. Ita vero ex communi theologorum sententia definitur: Matrimonium est viri et mulieris maritalis conjunctio inter legitimas personas, individuum vitae consuetudinem retinens.*" (Pars II, *De Matr. Sacr.*, n. 3)—Vermeersch is known to have worked on the preparation of the Encyclical. The somewhat unusual distinction it makes between marriage in a stricter and in a broader sense, is, both in language and in content, distinctly reminiscent of a passage in Vermeersch's *Theologia Moralis* Vol. IV, *De Castitate*, editio 2a, 1927, n. 35. When the next edition of this volume appeared (1933), after the publication of the Encyclical, Vermeersch expanded his remarks on the total community of life of the spouses and quoted the above passage of "the marvelous Encyclical *Casti Connubii*" in confirmation of them (n. 41). This leads one to speculate.

¹⁹ See, for example, Michael F. McAuliffe, *Catholic Moral Teaching on the Nature and Object of Conjugal Love* (Washington: Catholic University of America Press, 1954), p. 109 f., with authors cited there; and Bernard J. F. Lonergan, S.J., "Finality, Love, Marriage," *Theological Studies*, 4 (1943), 477-510 at 487.

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Catechism of the Council of Trent on which it is based, the encyclical also is speaking both of a *finis operis* and a *finis operantis*. But this requires a word of explanation.

Obviously the mutual sanctification of the partners mentioned here is supernatural sanctification. Hitherto, in speaking of the ends of marriage, we have been mainly concerned with marriage as an institution of nature. In this passage we see the natural finality of marriage taken up and, as it were, inserted into the higher order of the supernatural.²⁰ Conjugal love strives for the communication of the good things proper to marriage. Even in a hypothetical natural order married partners by their very state in life would be destined to achieve "the good life" together. Conjugal love would include at least that. But since God has raised man to a supernatural destiny, the conjugal love of husband and wife has an essentially higher dimension. Their mutual love looks to the communication of supernatural perfection. They are to achieve not merely the good life, but eternal life, and are to achieve it together. *Interior, supernatural perfection to be achieved in common* is thus one of the good things, and in some sense the primary good thing, of marriage itself in the supernatural order.²¹ Marriage is providentially directed to this as its "primary cause and reason."

The following question and answer are from Vermeersch's Catechism according to the Encyclical:

Why does the Encyclical designate the mutual formation of the spouses, their efforts to perfect each other, as one of the primary causes and reasons for marriage?

²⁰ See Lonergan, *art. cit.*, p. 506 and *passim*.

²¹ See McAuliffe, *op. cit.*, p. 86 f., who however, treats the mutual sanctification of the partners as the object of conjugal love, and does not consider it a *finis operis* of marriage.

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First, because the spouses can in their union make this their chief purpose.

Secondly, because the community of life between the spouses—our second definition of marriage—is providentially directed by God to this last end, which, being the supreme end of man, occupies the first place in the Divine Will.²²

This providential direction which God gives marriage in the supernatural order should be considered, we think, a *finis operis* of marriage in that order. Consequently, to the question whether the Encyclical is speaking of a *finis operis* or a *finis operantis* here, we reply: It means both, as long as marriage is understood as a total community of life in the supernatural order.²³ In other words Christian marriage is a supernatural vocation in which husband and wife are called to achieve sanctification in Christ *together*. Mutual sanctification is the primary end of this Christian vocation. We develop this idea further in the following chapter.

²² *What is Marriage?* (New York: America Press, 1932) p. 25 (n. 60).

²³ This represents a revision of the opinion expressed by Ford, "Marriage: Its Meaning and Purposes," *Theological Studies*, 3 (1942), 333-374 at 372.



Christian Marriage as a Vocation

ON JULY 13, 1958, less than three months before his death Pope Pius XII addressed 60,000 members of the Young Women's Section of Italian Catholic Action who had gathered in St. Peter's Square to celebrate the fortieth anniversary of their organization. For his theme the Pope chose the Second Spring that he hoped the Church would enjoy after the trying years of the war and the post-war period. In keeping with this theme, he likened the young women to flowers; and, having introduced this topic, he said he would like to pause for a moment and meditate with his audience on two types of flowers that in one way or another should include all of them. Here, in large part, is the meditation:

There are, indeed, flowers that remain such always and are destined to be plucked without ever germinating new life; and there are flowers that first beautify the plant and then, when their petals have fallen, give way to fruit.

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a) Some of you—not all and not the majority—will be called by God to consecrated virginity . . .

b) There are others among you—and they are the large majority—whom God has called, or soon will call, to be flowers who will not remain as they are, because one day they will have to bear fruit, if God so wills, in a holy home.

On various occasions we have had to reject the error of those who maintain that the Christian virgin is something mutilated and incomplete, something that does not achieve the perfection of its own being. On the contrary, virginity is like an angelic way of life and by its excellence is a state superior to that of matrimony. But on the other hand, this superiority does not in any way detract from the beauty and grandeur of married life.

Therefore, my beloved daughters, be conscious, from this moment on, of the grandeur of the Christian wife and the Christian mother. A clear and timely awareness of this will be an incentive to omit no part of the preparation worthy of the sublime mission that awaits you. Some day—we wish it for you paternally—you will kneel at the foot of the altar and beside you will be a young man resolved to live his life with you. That day you will be united by a bond which has God as its author, the substance of which is most noble, the consent to which is sacred; a contract which Jesus deigned to elevate to the dignity of a sacrament, thus including it among the things that are, and are known to us as the most meaningful and most salutary effects of the Incarnation. . . .

The effect of grace, which is conferred “according to the measure willed by the Incarnate Word” is that men with their soul, intelligence, will and activities, as well as with their body, are made really participants in the divine nature and become children of God. In this way, Christian marriage also acquires a special dignity and, in virtue of the sacrament of matrimony, a human institution—the family community—is transformed into an instrument of divine action, so that it is directly sanctified and your conjugal union itself receives a very special imprint of God.

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But if your state one day will be so great, if one day you will be called to be the cooperators with God in the transmission of life, it is necessary that there be born in you, and always grow stronger, the resolute will to be holy, and to be such as wives, in your conjugal union itself and in the very exercise of your love. Thus side by side with the snow-white ranks of the virgins, which We hope will increase with each passing day, there will be a multitude of holy wives. These will not be satisfied with asking God for a mere blessing on their love and on their union, but they will beg Him to plant a mystic seed in their souls, made almost as one soul with their husband—a seed that will flower and bear fruit in the sanctification of themselves and of their children.¹

Not only the poetic language of the Pope, but his thought reflects a transition from our previous chapters. It was necessary, we think, to show that the five ends of marriage as a natural institution mentioned in *Casti Connubii* are all essential to every true marriage whether Christian or not. In doing this we had to show that they are essential only in the sense that every marriage bond contains a fundamental right to the acts by which these ends are achieved. In a word we had to prescind for the most part from the actual achievement of these ends, which among Christians takes place in a supernatural, sacramental state of life. Marriage as God actually planned it and as He wants it includes not only the *esse* but the *bene esse* of that institution; and in terms of the *bene esse* Christian marriage means living in such a way that with the grace of almighty God the ends of marriage can be achieved in a Christian way.

The sacramentality of marriage has been explained in many theological works. There is no need to develop the

¹ AAS, 50 (1958), 530-535 at 532-535. The original is in Italian. Our translation is taken for the most part but not entirely from *The Pope Speaks*, 5 (Summer, 1958), 96-100.

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topic here. It seems to us, however, that there is no better way of completing our treatment of the ends of Christian marriage than to follow the lead of Pius XII and to discuss Christian marriage as a vocation.

The concept of marriage as a vocation has many facets and brings to mind many interesting questions. We shall limit ourselves to the following considerations: (1) The ends of marriage and vocation; (2) the marriage act and vocation; and (3) some pastoral corollaries of the doctrine that marriage is a vocation.

THE ENDS OF MARRIAGE AND VOCATION

A man's vocation includes the entire plan of God for him from the moment of his conception to the consummation of his life in eternal glory. In the plan of God, each person is called to a definite degree of union with the Blessed Trinity in the beatific vision, and every grace, external and internal, given to him on earth is intended to help him to achieve this sublime destiny. But in a special way, man's vocation is the state of life to which God calls him, and the will of God for him is thus manifested by the duties and ideals of that state. It is according to these duties and these ideals that he is to work out his personal perfection, his personal contribution to that tremendous created reflection of uncreated goodness which is the ultimate *finis creationis*.²

How do we know the duties and ideals that pertain to the married state? Mainly by knowing its divinely established

² In our text we speak of (1) the created reflection of (2) uncreated goodness. The latter is both the *finis operantis* and the *finis qui ultimus* of creation. The former, to which man's own perfection pertains, is the *finis quo ultimus* of creatures. Cf. Philip J. Donnelly, S.J., "St. Thomas and the Ultimate Purpose of Creation," *Theological Studies*, 2 (1941), 53-83; and, by the same author, "The Doctrine of the Vatican Council on the End of Creation," *ibid.*, 4 (1943), 3-33.

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purposes, not in their mere essentials, but by knowing what they mean in actual Christian living. It is logical, therefore, to reconsider the five essential ends of marriage and at least to indicate briefly how the achievement of, or the sincere attempt to achieve, these ends, is a means of sanctification for Christian spouses. This in turn will throw light on the sense in which the mutual sanctification of the partners is "the primary cause and reason of marriage."

PARENTHOOD

In previous chapters we had to restrict the meaning of procreation and rearing as essential ends of marriage to their narrowest possible limits. Such restrictions are not necessary in the present context. When we consider the primary ends of marriage with reference to the vocation of marriage we obviously mean the vocation of parenthood, with all the human warmth and depth that the word implies. It is true, of course, that many are called to marriage without at the same time having the vocation to be parents. But if we consider marriage as it usually takes place, among young people of childbearing age and ability, it would be an extraordinary circumstance that would exclude parenthood from their calling. This is the kind of couple we have chiefly in mind.

A complete study of a vocation to any state of life includes a consideration of all the duties of that state as well as its ideals. The two points that we should like to choose for present emphasis are, first, the fact that the vocation of parenthood means the establishment of a home, in which, as Pius XI expressed it, children are considered a blessing, where the father has the primacy of governing while the mother has the primacy of love;³ and secondly, the fact that

³ Cf. *Casti Connubii*, especially the treatment of the *bonum proles* and the *bonum fidei*: AAS, 22 (1930), 543-550.

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in Christian marriage children are generated to become not merely citizens of earth but citizens of heaven. Pius XI reminds us that the "sacredness of marriage . . . arises . . . from its purpose which is the begetting and rearing of children for God."⁴ According to some theologians, this work of parenthood pertains to the virtue of religion.⁵

Or, to use the words of Pius XII, Christian spouses are to establish a home in which

children are considered not heavy burdens but sweet pledges of love; no reprehensible motive of convenience, no seeking after sterile pleasure bring about the frustration of the gift of life, nor cause to fall into disuse the sweet names of brother and sister. With what solicitude do the parents take care that the children not only grow in physical vigor but also that following in the footsteps of their forebears whose memory is often recalled to them, they may shine with the light which profession of the pure faith and moral goodness impart to them.⁶

These few words from the recent popes sufficiently indicate the duties and ideals of the vocation of Christian parenthood insofar as these duties and ideals pertain to the fulfillment of the primary ends of marriage. But today the world is resounding with debates over the population explosion, and one may wonder why, in the light of the dire predictions of some of the debaters, we should continue to exalt the vocation of parenthood. For the present it suffices to say that we are confident, relying on the same Providence which established Christian marriage as the vocation of the multitude, that this problem will never become so acute as to nullify the glory of Christian parenthood. It is less than

⁴ *Ibid.*, 570.

⁵ St. Thomas, *Suppl.*, q. 41, a 4, corp., and compare, q. 49, a 5, ad 1.

⁶ The quoted words are from the English version of the encyclical *Seruum laetitiae* as given in AAS, 31 (1939), 650.

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ten years since Pope Pius XII told the obstetrical nurses of Italy that both parties to a marriage should "duly esteem and appreciate the honor of raising up a new life and look forward with a holy impatience to see it blossom forth."⁷ It is only a little more than twenty years since he issued the encyclical *Sertum laetitiae* from which we have just quoted. Only thirty years ago *Casti Connubii* extolled the beauty of family life and the dignity of Christian parenthood. To us this statement of the Anglican Bishops, issued from Lambeth in 1930, remains just as valid today as the day it was written:

Bound up with that high and holy vocation [of marriage] is the vocation to parenthood. Here we would sound a call to all who will listen. Every child is for the State a potential citizen, for the Church a potential saint. When healthy parents refuse for selfish reasons to have children in homes where there is, or by self-denial can be, provision for them, they deny to both the Church and nation lives, which, with a Christian training, might be of priceless value to the community. We are familiar with the difficulties. We deeply sympathize with those who have burdens which are hard to bear. But we appeal to the whole community of the Church to remember that in home life, as in personal life, we are called to take up the cross, to endure hardness, and to count upon the enabling power of the Spirit of God. And indeed when the sacrifice is made for the sake of the family, that cross becomes a crown.⁸

THE SECONDARY ENDS

Although parenthood is not universally a part of the voca-

⁷ AAS, 43 (1958), 835-at 842.

⁸ *The Lambeth Conference (1867-1930)*, (London: S.P.C.K., 1948), 151. The paragraph is taken from the "Encyclical Letter to the Faithful in Christ Jesus," August 9, 1930.

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tion of marriage, it provides us with the first key to the essential distinction between marriage and celibacy, considered precisely as divine vocations. In the ordinary providence of God, parenthood begins with a most intimate personal union. If conception takes place, the child has the characteristics of both father and mother. In the rearing of the child according to the divine plan, both father and mother make distinctive contributions, not as separate individuals, but in perfect harmony. In a word, all the acts of parenthood show that this is a vocation of "two-in-oneness."⁹ In accomplishing this vocation, two people do the will of God together. Celibacy, on the other hand, is essentially a seeking of God in "aloneness." By this we obviously do not mean that the goals of celibacy are accomplished without the aid of other human beings. The very closeness and depth of the friendships of celibate saints and of fellow religious show this to be false. Yet, despite the depth and warmth of their friendships, there is a very profound sense in which the celibate always achieves his vocation in solitude whereas the married vocation must be a seeking of God together.

Within marriage the universality of this call to seek God together is clear when the secondary ends of marriage are considered. For even when parenthood is an impossibility, Christian spouses are supposed to live according to these secondary ends. Previously we quoted a Rota decision which describes the elements of mutual help as

cohabitation, community of board, use of material goods, earning a living and administering it, help of a more personal kind

⁹ According to Bernard J. F. Lonergan, S.J., "Love, Finality, Marriage," *Theological Studies*, 4 (1943), 477-510 at 478, note 7, Aristotle appears to have coined an adjective which corresponds closely with Doms' "two-in-oneness" (*Zweieinigheit*). It is "syndyastic" or "two-together-ative."

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in the various circumstances of life, in psychic and bodily needs, in the use of natural faculties, and even in the exercise of supernatural virtues.¹⁰

It is natural that this enumeration has a certain coldness or matter-of-factness of a juridical statement; but who does not realize that in actual life these elements blend together into a warmth and sympathetic understanding that can be had perfectly only when two human beings are sharing their entire lives, their joys, their sorrows, their burdens, their aspirations for holiness? And this human warmth is much more obvious when one reads again the description of conjugal love given by Pius XI and quoted in full at the end of Chapter 6. If the Pope is not there saying that married people, in their quest for God, share not only their material things and their bodies, but also, insofar as that is possible, their souls too, he is using words without meaning. And in this connection we might again note that in the quotation from Pius XII with which we began the present chapter, he advised the young women to pray that God would “plant a mystic seed in their souls, *made almost as one soul with their husband*—a seed that will flower and bear fruit in the sanctification of themselves and of their children.”

As for the *remedium concupiscentiae*, whether it be considered under the aspect of the virtuous use of conjugal intercourse, or the virtuous abstinence from intercourse, or as a help to remove or adjust to the sexual tensions of life, it is clear that this goal of married life is to be achieved not so much by solitary struggle as by mutual cooperation of husband and wife.

From these brief words about the ends of marriage and the vocation of marriage it is easy to see that the secondary,

¹⁰ *Supra*, Chapter 5, note 1.

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“personalist” ends of marriage are more intimately and more universally connected with the vocation of marriage than are the primary ends. And it seems to us that one reason why some Catholic personalists have erred is that they have confused marriage as a vocation with marriage as an institution. For, considered precisely as a vocation, the primary end of any way of life is personal sanctification, and of married life is mutual sanctification. Thus, the priesthood itself is a social institution, founded by Christ for the good of His Church; but certainly the primary thing, the most important thing in the life of any individual priest is the salvation and sanctification of his own soul. However, granted his call to the priesthood, he is to achieve this personal perfection through fidelity to the laws and purposes of the priesthood. It is much the same with marriage. The most important thing in the world for each married person is personal sanctification and perfection, but, granted the vocation of marriage, his or her personal sanctification is to be achieved through mutual, cooperative fidelity to the laws and purposes of marriage. Now, both marriage and the priesthood are social institutions and, as such, their fundamental, primary purpose is social good, not individual good.

To sum up this latter point—which we consider important for our theory of the ends of marriage—we can truly speak of individual or mutual perfection as the primary purpose of such social institutions as marriage and the priesthood only when these states of life are considered under the general aspect of “creatures” (as would be the case in explaining the First Principle and Foundation of *The Spiritual Exercises*). But when they are considered precisely as natural or supernatural institutions, and when the internal reason for the existence of these institutions is analyzed, it is clear that their social purpose is primary.

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This distinction between marriage as a vocation and marriage as an institution seems to us to contain the best explanation of the disputed passage of *Casti Connubii* to which we have referred frequently in previous chapters:

This mutual interior formation of the partners, this earnest desire of perfecting one another, can be said in a very true sense, as the Roman Catechism teaches, to be the primary cause and reason of marriage, if only marriage is taken, not strictly as an institution for the proper procreation and rearing of children, but in a broader sense, as a sharing, a community, a union of their whole life.¹¹

To us this seems to mean: If Christian marriage be considered as a divine call for two persons to work out their salvation and sanctification by the closest kind of physical and spiritual union, then its primary purpose may truly be said to be the mutual, personal perfection of the spouses.¹²

THE MARRIAGE ACT AND VOCATION

There are many acts and activities of man and wife which ought to be called distinctively conjugal. For instance, even apart from sexual intercourse, the cohabitation of the partners has connotations that go beyond mere living under the same roof; and the mutual help they give to one another in

¹¹ AAS, 22 (1930), 539-592 at 548, 549.

¹² The personal perfection which is the goal of marriage as a vocation is not coextensive with the secondary or personalist ends of marriage. In the first place marriage as a mere natural institution would have its secondary or personalist ends, and we are speaking here of an end which is peculiar to marriage as a supernatural institution and vocation. But furthermore, in the design of God, this personal perfection is to be achieved in marriage by all the acts proper to the married state, and therefore, insofar as this is reasonably possible, by striving to achieve all the ends of marriage. Hence, though the acts pertinent to the secondary ends are more universally associated with the vocation of marriage, they are not exclusively associated with it nor identified with it.

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the various trials and joys of life, as well as the quality of love that permeates their mutual dealings, is something distinctively, even though to some extent intangibly, different from the mutual comfort of other friends.¹³ Nevertheless it is perfectly clear to everyone that the most distinctive and specific act of married life is sexual intercourse. That is why Pius XI, expressing the common teaching of theologians, spoke of sexual intercourse between husband and wife as *opus coniugii*, the marriage act. And with good reason could he do so. Though in our opinion not the complete object of the marriage contract, the fundamental right to this act is certainly its primary and central object. And it is the actual use of this right which makes Christian marriage absolutely indissoluble.

Since conjugal intercourse is so distinctive of marriage, it is well to ask ourselves the question: How does this intercourse contribute to the vocation of Christian marriage? A brief answer to this question may be given by considering the relationship of the marriage act to the marriage contract, to the ends of marriage, and to the supernatural symbolism of Christian marriage.

As regards the contract, St. Paul has given us the key to the meaning of intercourse when he said: "Let the husband render to the wife her due, and likewise the wife to the husband."¹⁴ It is in the full sense of the word a mutual debt, an obligation of strict justice. It follows, therefore, that of its nature, conjugal intercourse is an act of the virtue of commutative justice.

As regards the primary ends of marriage, although intercourse itself has no necessary and inevitable relation to the rearing of children, it is obviously the sole normal means,

¹³ *Supra*, Chapter 5, p. 77.

¹⁴ 1 Cor. 7, 3.

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and the only means planned by God, for the procreation of human life. As Pius XII expressed it when condemning artificial insemination, human procreation must be

a personal action, a simultaneous and immediate cooperation of the parties which, by the very nature of the participants and the peculiar character of the act, is the expression of that mutual self-giving which, in the words of Holy Scripture, effects the union "in one flesh."¹⁵

The "nature of the participants" is that together they make up one adequate principle of human generation; and "the peculiar character of the act" is that, granted the aptness of natural conditions and the creative act of God, it makes procreation a reality. And, as a procreative act, conjugal intercourse is divinely stamped with any or all the virtues that characterize procreation as such. In a later chapter, we shall discuss this problem of the characteristic virtue of human procreation and shall indicate these possible explanations: legal justice, piety, chastity, religion, or perhaps a combination of all. At any rate, whatever be the virtue or virtues, it is clear that under its procreative aspect truly conjugal intercourse is objectively an act of some virtue; it is not merely an indifferent act.

In referring to conjugal intercourse, Pius XII called it an act of mutual self-giving. This apparently refers to one or both of the secondary ends that we have designated as mutual help and conjugal love. Under both these aspects, sexual intercourse is an act of the virtue of love in the natural order, or of charity in the supernatural order. And

¹⁵ AAS, 43 (1951), 850. The quoted statement is taken from the Address to the Midwives, in which the Pope reiterated his condemnation of artificial insemination even within marriage. He did not reject, however, procedures which are merely an aid to natural intercourse.

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insofar as the marriage act is divinely planned as a *remedium concupiscentiae*, it may be appropriately designated as an act of the virtue of conjugal chastity. As such it pertains also to the *bonum fidei*. Hence, as a fulfillment of the contract and as a means of achieving the ends of marriage, conjugal intercourse is objectively an exercise of many virtues: commutative justice, religion, piety, legal justice, conjugal love and chastity.

All these virtue-values belong to conjugal intercourse even in a nonsacramental marriage. In a sacramental marriage there is an added dignity that we would know only through revelation. For, just as a sacramental marriage is in itself a symbol of the union of Christ with the Church, so the marriage act, which in some mysterious way perfects the contract and makes it absolutely indissoluble, has this same symbolism. As Pope Pius XI so aptly said when he explained the absolute indissolubility of consummated Christian marriage:

If we wish with all reverence to inquire into the intimate reason for this divine decree, Venerable Brethren, we shall easily see it in the mystical signification of Christian marriage which is fully and perfectly verified in consummated marriage between Christians, for, as the Apostle said in his Epistle to the Ephesians, as We indicated above, the marriage of Christians recalls that most perfect union which exists between Christ and the Church: "This is a great sacrament; but I speak in Christ and the Church," which union, as long as Christ shall live and the Church through him, can never be dissolved by any separation.¹⁶

The mere recalling of these truths brings into immediate relief the profound meaning of conjugal intercourse in terms

¹⁶ AAS, 22 (1930), 552 (citing Eph. 4, 32. Italics added.)

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of Christian marriage as a vocation. Certainly an act which has so much virtue-value in the natural order, and such symbolic significance in the supernatural order is an apt means for the sanctification and perfection of those who have the right (and often the duty) to perform it. Indeed, it is hardly stressing sex too much to say that in the ordinary providence of God, the marriage act is one of the chief means by which Christian spouses are to attain God together, just as it is the central act of that state of life to which God has called them. And it is here particularly, though by no means exclusively, that we see the essential distinction between the vocations of marriage and celibacy to which we have previously referred. By the proper use of their physical powers of sex, married people are to find God together; by his joyous renunciation of the use of the same power, the celibate finds God alone.

SOME PASTORAL COROLLARIES

The doctrine that marriage is a divine vocation obviously has many practical implications in the pastoral ministry—by which we mean the apostolate of parochial work and education of the young. Among these implications we consider the following to be the most important:

a) *The sense of marriage as a vocation must be further developed.* The idea of marriage as a vocation is certainly not novel. This vocation theme, or its practical equivalent, the holiness of the marriage state, has been beautifully developed by Catholic writers of recent years and in the discourses of Pius XII.¹⁷ Nevertheless, the vocation conception has not

¹⁷ See, for instance, his many talks to newlyweds. The index to *Discorsi e Radiomessaggi* lists 80 such talks in the first five years of his pontificate. Many excerpts from these talks, translated into English, are given by Thomas J. Murphy in his dissertation, *The Supernatural Perfection of*

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yet become part of the leaven of Catholic thought in general. If one asks the average Catholic what he means by a "vocation" he is very likely to answer that it means a call to the priesthood or to the religious life. And if one notes the frequent requests for prayers for vocations, the connotation is usually reserved to the priesthood and the religious life, and possibly to lay missionary work. And finally, if one scans the various programs for "vocation days" and "vocation weeks" held annually in most Catholic schools, one is all too often struck with the fact that the programs do not include the vocation of marriage, the vocation which is certainly going to be part of the divine plan for the vast majority of young men and women.

The principal remedy for this deficiency seems to lie in this: as priests and educators we should learn to use the word "vocation" in its proper sense, which includes both marriage and celibacy; and when we speak of one of the celibate states to use a qualifying adjective such as, "religious vocation," "priestly vocation," "ecclesiastical vocation," and so forth. But besides developing this mentality, priests and other educators must also have a way of instilling this marriage-vocation idea into the minds of youth and parents. Many helps for this will be found in the discourses of Pius XII and the writings of Catholics to which we referred at the beginning of this section. We recommend familiarity with all these, but above all we recommend the constant study and use of that document which is the most important Catholic statement on marriage of our century, the encyclical *Casti Connubii*.

It is true that *Casti Connubii* does not explicitly refer to marriage as a divine vocation. Yet this encyclical begins with

Conjugal Life according to Pope Pius XII (Mundelein, Ill.: St. Mary of the Lake Seminary, 1960).

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the words: "How great is the dignity of chaste wedlock"; it dwells on the exalted duties of Christian spouses; it warns those who are about to marry to consider well the sacred and religious character of marriage, to prepare their souls well by the practice of virtue and to make a careful and prayerful selection of a partner; it exhorts those already married to rely on the graces of the sacrament to live up to the demands, often heroic, of their state in life; it points out to them that their mutual sanctification is "the primary cause and reason" of their state in life. If all this does not mean that Christian marriage is a true vocation, then it is indeed difficult to know what a vocation can be.

Perhaps because of our own decided preference for this great papal pronouncement, we should like to refer more in particular to some passages that concern the sacred and sacramental character of Christian marriage. The first passage, which is addressed to those who are about to marry, runs as follows:

Even by the light of reason alone and particularly if the ancient records of history are investigated, if the unwavering popular conscience is interrogated and the manners and institutions of all races examined, it is sufficiently obvious that there is a certain sacredness and religious character attaching even to the purely natural union of man and woman, "not something added by chance but innate, not imposed by man but involved in the nature of things," since it has "God for its author and has been even from the beginning a forshadowing of the Incarnation of the Word of God." This sacredness of marriage which is intimately connected with religion and all that is holy, arises from the divine origin we have just mentioned, from its purpose which is the begetting and rearing of children for God, and the binding of man and wife to God through Christian love and mutual support; and finally it arises from the very nature of

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wedlock, whose institution is to be sought for in the farseeing Providence of God, whereby it is the means of transmitting life, thus making the parents the ministers as it were of the Divine Omnipotence. To this must be added that new element of dignity which comes from the sacrament, by which the Christian marriage is so ennobled and raised to such a level that it appeared to the Apostle as a great sacrament, honorable in every way.

This religious character of marriage, its sublime signification of grace and the union between Christ and the Church, evidently requires that those about to marry should show a holy reverence towards it, and zealously endeavor to make their marriage approach as nearly as possible to the archetype of Christ and the Church.¹⁸

All this about the sacredness of marriage to those about to marry. Later in the encyclical, in speaking to the married of the necessity of living up to the laws of God and nature with regard to marriage, the Pope appealed to the continuing source of grace they have always at hand in the marriage itself because the marriage of Christians is a sacrament:

Let them constantly keep in mind that they have been sanctified and strengthened for the duties and for the dignity of their state by a special sacrament, the efficacious power of which, although it does not impress a character, is undying. To this purpose let them ponder over the words, full of real comfort, of the Holy Cardinal Robert Bellarmine, who with other well-known theologians with devout conviction thus expresses himself: "The sacrament of matrimony can be regarded in two ways: first, in the making, and then in its permanent state. For it is a sacrament like to that of the Eucharist, which not only when it is being conferred but also while it remains, is a sac-

¹⁸ AAS, 22 (1930), 570.

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rament; for as long as the married parties are alive, so long is their union a sacrament of Christ and the Church.”¹⁹

In the foregoing words, without settling any dogmatic controversy, Pius XI showed a definite preference for the view that marriage is a sacrament not only *in fieri* but *in facto esse*. The pastoral implication of this teaching is obvious: it reminds married people that whatever be their trials and difficulties, they have within them, in the marriage bond itself, the source of grace necessary to overcome the difficulties and be sanctified in the process. In other words, as the very next paragraph of the encyclical declares, they have within them something similar to the grace of the priesthood:

And if ever they should feel themselves to be overburdened by the hardships of their condition of life, let them not lose courage, but rather let them regard in some measure as addressed to them that which St. Paul the Apostle wrote to his beloved disciple Timothy regarding the sacrament of Holy Orders when the disciple was dejected through hardship and insults: “I admonish you that you stir up the grace which is in you by the imposition of hands. For God hath not given us the spirit of fear, but of power and of love, and of sobriety.”²⁰

b) *Mixed marriages are per se hindrances to the realization of the vocational ideal of marriage.* Pius XI implied this when, in telling young people that their choice of a partner must be made prayerfully and carefully, he said:

They should, in so deliberating, keep before their minds the

¹⁹ *Ibid.*, 583.

²⁰ *Ibid.*, 584, citing 2 Tim. 1, 6-7. In the same passage the Pontiff exhorts husbands and wives “not to neglect the grace of the sacrament which is within them,” citing 1 Tim. 4, 14.

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thought, first of God and of the true religion of Christ, then of themselves, of their partner, of the children to come, as also of home and civil society, for which marriage is, as it were a fountainhead. Let them diligently pray for divine help, so that they will make their choice in accordance with Christian prudence, not indeed led by the blind and unchecked impulse of lust, nor by the desire of riches or other base influence, but by a true and noble love and by a sincere affection toward the future partner; and then let them strive in their married life toward those ends for which this state was constituted by God.²¹

Earlier in the encyclical the Pope had been much more explicit about the presumptive incompatibility of mixed marriages with the vocational ideal. After explaining the sacredness of Christian marriage and pointing out the moral dangers of mixed marriage, he continued:

There is also to be considered that in these mixed marriages it becomes much more difficult to imitate by a lively conformity of spirit the mystery of which we have spoken, namely, that close union between Christ and His Church.

Assuredly also, there will be wanting that close union of spirit which as it is the sign and mark of the Church of Christ, so also should be the sign of Christian wedlock, its glory and adornment. For where there exists diversity of mind, truth and feeling, the bond of union of mind and heart is wont to be broken or at least weakened.²²

The first, and very obvious pastoral conclusion from this papal teaching is that, apart from their moral dangers, mixed marriages should be discouraged because they conflict with the vocational ideal of complete "two-in-oneness."²³ This point needs no further development.

²¹ *Ibid.*, 586

²² *Ibid.*, 571.

²³ If the marriage is to an unbaptized person, even though entered validly

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Nevertheless there is another side of the picture that has to be realistically faced. In many parts of the world—and the western part of our own country is typical of this—there are two serious difficulties in applying the Catholic teaching about mixed marriages. The first difficulty is an objective one: the relatively small number of Catholics. The second is a subjective one: the conviction on the part of many good Catholics that they will convert the non-Catholic.

It does not seem wise to make a general policy of simply designating this subjective attitude as an illusion. It is surely possible and perhaps even probable that, in the providence of God, marriage may be the means of propagating the faith. And those Catholics who are relying on a conversion should be quietly and calmly helped to test their conviction by having them consider this truth: they can reasonably hope for conversion only if, besides a firm resolve to lead an exemplary Catholic life themselves, they can honestly say of their future partner that he or she: (i) is not devoutly attached to any other Church; (ii) is not prejudiced against the Catholic Church; and (iii) is of sound moral character and principles, especially as regards points that intimately concern married life, such as birth control and divorce. The conditions given here are realistic; if they are not all fulfilled hope of conversion is very unrealistic; and, if they are all fulfilled, that hope may be very realistic. After all, St. Paul, who extolled the beauty of sacramental marriage, also said: "For the unbelieving husband is sanctified by the believing wife; and the unbelieving wife is sanctified by the believing husband."²⁴

There can be real sanctification if the Catholic party will

with a dispensation from *disparitas cultus*, the non-Catholic party obviously does not receive the sacrament of matrimony, and there are serious doubts whether the Catholic receives it.

²⁴ 1 Cor. 7, 14.

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give the example and if the non-Catholic is receptive. But this receptivity is hardly to be hoped for unless the conditions enumerated above are fulfilled. If they are, there seems to be more than a mere possibility of conversion either in the early years of marriage or even before marriage.

c) *Christian asceticism in the use of marriage.* Our third and final pastoral suggestion is this: In view of the close relationship between the marriage act and the fulfillment of vocation, those about to marry should be given not only the pertinent moral principles, but also some sound ascetical rules concerning their use of the marriage act. The principles concerning strict moral obligations in conjugal intimacy are available in every manual of moral theology. But practical ascetical principles, rules for using sex in a more perfect Christian way are not usually spelled out. In a subsequent chapter when discussing hedonism versus holiness in the use of marriage, we will attempt to set down some simple norms that will help the director of married persons to guide them to holiness in their sexual relations.²⁵ Where the pursuit of Christian ideals is lacking, the moral values themselves are in danger; and sin and unhappiness can easily be the result.

In the secular literature of our times (and unfortunately in some Catholic literature), there is entirely too much emphasis on physical pleasure, too much insistence on sexual compatibility as the source of marital happiness and on sexual incompatibility as the source of unhappiness. As in many errors, there is a grain of truth here. Conjugal intercourse was certainly intended by almighty God as one of the chief sources of marital union and happiness. But it is only one source, just as it is only one aspect of marriage. By

²⁵ Chapter 10, p. 201 ff.

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means of a sound asceticism Christian husbands and wives, mothers and fathers, learn in a practical way that they can achieve harmony of souls in many ways that transcend the flesh. This is especially true, we think, of those who have a vivid appreciation of marriage as their own divinely-given vocation. For man is never more truly happy, more truly at peace, than when he is conscious of doing the will of God by following the vocation to which God has called him.

Part II

The Christian Use of
Marriage

9



Historical Outline of Views on Conjugal Intimacy

THE FIRST PART of our volume was concerned with outlining a theoretical explanation, which attempted to bring together certain philosophical, canonical and theological teachings on the nature of marriage, of the subordination of its ends, and of sacramental marriage as a Christian vocation. We are now ready to study in greater detail some of the more practical aspects of the sexual use of marriage. We undertake this study principally from a theological and pastoral point of view, hoping that what we have to say will help confessors and professional students of theology to a deeper understanding of the theological principles that govern conjugal intimacy. For it is about these principles and problems that they are most frequently consulted. A glance at the chapter headings of *Part II* will indicate in general what these problems are.

By way of introduction to them we believe it is useful, and in fact necessary, to give a brief, prefatory outline of the his-

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tory of theological teaching on the morality of conjugal intimacy. This conspectus will give some insight into the historical development of some of our modern certainties in these matters, will help avoid the false conception that every detail of doctrine now commonly taught in the moral manuals always enjoyed the same clear unanimity of definition that it has today, and will encourage theological investigation and speculation as to the theory and rationale of some of those conclusions about which we now have practical certainty, at least from the common consent of theologians.

The theologians of the church in the principles and in the practical counsels they have given the faithful have always proposed to husbands and wives the highest ideals of chastity, piety, justice and love. But in the course of the centuries there have been developments. In the earlier periods theologians were inclined to a more severe, in later times to a more lenient, view of the morality of conjugal pleasures. Certain fundamental points, such as the immorality of contraception, have always been part of the teaching of the Church itself. Her doctrine on such points is fixed and irreformable. In fact until modern times Protestant Christians were also agreed on the immorality of contraception. Until the end of the nineteenth century it would have been impossible to find any Protestant groups who defended the practice. The entire Christian tradition, until this century, has always rejected it.

But there are also matters, including some on which we have practical certainty today, which are not part of the infallible teaching of the Church, but which have been developed by the theologians in the course of time as the theology of marriage itself and its relation to its ends has developed. The terminology, now well-established, of the

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primary and secondary ends of marriage had not been developed in the time of the Fathers and the earlier scholastics. This terminology along with the doctrine it expresses has a bearing on the practical morality of many points concerning marital intimacy.

In the Gospels we look in vain for any explicit teaching on the morality of conjugal intimacy from the lips of Our Lord. It is in St. Paul that we find our first basic principles on the sexual use of marriage. In 1 Corinthians, Chapter 7, verses 1 to 6, St. Paul speaks as follows:

1 Now concerning the things whereof you wrote to me: it is good for a man not to touch a woman. 2 But for fear of fornication, let every man have his own wife, and let every woman have her own husband. 3 Let the husband render the debt to his wife, and the wife also in like manner to the husband. 4 The wife has not power of her own body, but the husband. And in like manner the husband also has not power of his own body, but the wife. 5 Defraud not one another, except, perhaps, by consent, for a time, that you may give yourselves to prayer; and return together again, lest Satan tempt you for your incontinency. 6 But I speak this by indulgence, not by commandment.

There exist many comments on this passage in the writings of the Fathers of the Church.

Although the Church always condemned Manichaeism, and very few Catholic theologians ever fell into it in the course of the centuries, yet some of the Fathers and early ecclesiastical writers took a very pessimistic view of the sexual use of marriage and of sex in general. St. Gregory of Nyssa, Origen and St. John Chrysostom were of the opinion "that some other mode of propagation or multiplication would have been provided in the state of original justice,

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although our first parents, in view of their future sin, were created with generative organs.”¹ In other words the sexual use of marriage was for them a post-lapsarian phenomenon. An additional reason for this view was the fact that it was death, a consequence of sin, which made the conservation or renewal of the species necessary.

Of all the Fathers, St. Augustine was easily the most influential in determining the future course of theological opinion in these matters. And yet, as we shall see, some of St. Augustine’s teachings are now generally forsaken by theologians and by authoritative ecclesiastical documents.² The severity of Augustine’s teaching was connected with his conception of the nature of concupiscence, and of original sin, and of the supposed role played by concupiscence in the transmission of original sin.³

St. Augustine held that concupiscence, and especially sexual concupiscence, was evil. He was at pains to point out that it was a shameful thing, a disease, a vice, a contamination, and it can, therefore, in no sense be considered one of the *bona matrimonii*.⁴ One would almost suspect that he considered it evil in itself. Therefore, when St. Augustine

¹ Joseph Fuchs, S.J., *De Castitate et Ordine Sexuali* (Rome, Editrice Università Gregoriana, 1960, ed. altera), p. 11.

² For instance, *Casti Connubii*, AAS, 22 (1930), 539–592 at 561 approves the use of marriage by those who know they are sterile; approves the use of periodic continence; nor does it consider the avoidance of incontinence in oneself a venially guilty motive for intercourse. Various well-known responses of the Sacred Penitentiary have permitted the use of periodic continence, and now Pius XII in the Address to the Midwives, AAS, 43 (1951), 835–854, gives an authoritative explanation of the circumstances under which the practice of periodic continence, even for the whole of marriage, may become licit.

³ Edward F. Sheridan, S.J., *The Morality of the Pleasure Motive in the Use of Marriage* (Rome: Gregorian University Press, 1947).

⁴ *De Nuptiis et Concupiscentia*, I, n. 1, 7, 17—PL 44–413, 418, 425; *De Bono Conjugali*, cap. 3, and cap. 23—PL 40–376 and 392; *De Conjugiis Adulterinis*, lib. II, cap. 12—PL 40–478; *De Peccato Originali*, cap. 35, and cap. 37—PL 44–405 and 406; *De Genesi ad Litteram*, IX, Cap. 7—PL 34–397.

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came to defend the substantial goodness of marriage against the Manichees he was confronted with an obvious difficulty. Marriage was a good thing, but in order to be fruitful in children it had to make use of sexual concupiscence, an evil thing. He wrote his work *De Nuptiis et Concupiscentia* in order to meet this difficulty and to distinguish the good from the evil in marriage;—to show that marriage was not evil despite the sexual acts involved, but neither was concupiscence a good thing (one of the *bona matrimonii*) even if marriage had to make use of it.⁵ Acts which would otherwise be sinful (and always were so in the case of the unregenerate) were purified if Christian husbands and wives made use of them only to propagate children for the Kingdom of Heaven.⁶ If some other motive were predominant, such as the desire to avoid fornication, then concupiscence was victorious to a greater or lesser degree and the parties were guilty of at least a venial sin.⁷ St. Augustine was quite consistent in applying this doctrine, and the result was a certain severity in his teaching on the use of marriage—a severity which influenced theologians profoundly for a thousand years or more. For him procreation was not only the “primary” end of marriage, but the only entirely blameless end.

Thus St. Augustine spoke in strong terms against the husband who would approach his wife after she was already pregnant, for such intercourse could not result in conception.⁸ He denounced with indignation the Manichees who

⁵ *De Nuptiis et Concupiscentia*, lib. I, cap. 1—PL 44-413.

⁶ *Ibid.*, lib. I, cap. 3, cap. 4, and cap. 32—PL 44-415, and 434; *De Peccato Originali*, cap. 35—PL 44-405.

⁷ *De Bono Conjugali*, capita 9, 10, 12, 13, 21, 22—PL 40-380 ff.; *Contra Faustum*, lib. XXIII, cap. 61—PL 42-438; *De Nuptiis et Concupiscentia*, lib. I, cap. 8, and cap. 16—PL 44-418 and 424; *De Conjugiis Adulterinis*, lib. II, cap. 12—PL 40-478.

⁸ *De Bono Conjugali*, cap. 5 and 6—PL 40-376 and 377.

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taught their disciples to observe the sterile periods and have intercourse only at that time in order to avoid conception. For the Manichees believed that sexual intercourse was bad enough, even for married people, but that intercourse resulting in conception was even worse. St. Augustine considered that this deliberate use of the sterile period in order to avoid conception made a wife a harlot and destroyed the idea of marriage itself.⁹ He spoke with less severity of those who knowing themselves to be sterile continued to have intercourse. But even they were not entirely free from sin.¹⁰ Likewise, those who used the marriage right in order to flee temptation and avoid fornication (in other words, those who used it as a remedy for concupiscence), were guilty of venial sin.¹¹ He was firmly convinced that St. Paul's indulgence ("venia" in I Corinthians, 7, 6) was a proof that the intercourse mentioned in verse 5 was venially sinful.

⁹ *De Moribus Manichaeorum*, lib. II, cap. 18 (n. 65)—PL 32-1373. "Nonne vos [Manichaei] estis qui filios gignere eo quod animae ligentur in carne, gravius putatis esse peccatum, quam ipsum concubitus? Nonne vos estis qui nos solebatis monere ut quantum fieri posset observaremus tempus quo ad conceptum mulier post genitalium viscerum purgationem apta esset, eoque tempore a concubitu temperaremus ne carni anima implicaretur? Ex quo illud sequitur ut non liberorum procreandorum causa sed satiandae libidinis habere conjugem censeatis. Nuptiae autem, ut ipsae nuptiales tabulae clamant, liberorum procreandorum causa marem feminamque jungunt; quisquis ergo procreare liberos quam concumbere gravius dicit esse peccatum prohibet utique nuptias et non iam uxorem sed meretricem feminam facit quae donatis sibi certis rebus, viro ad explendam ejus libidinis jungitur. Si enim uxor est, matrimonium est. Non autem matrimonium est ubi datur opera ne sit mater: non igitur uxor." For translation, see Chapter 17, p. 380. St. Augustine speaks in a similar vein but not quite so clearly as to the use of the sterile period in *Contra Faustum Manichaeum*, lib. XV, cap. 7—PL 42-310.

¹⁰ *De Conjugiis Adulterinis*, lib. II, cap. 12—PL 40-478; *De Bono Conjugali*, cap. 3, cap. 15 etc.—PL 40-375, 385. *De Nuptiis et Concupiscentia*, lib. I, cap. 17—PL 44-424; *Contra Julianum*, lib. III, cap. 21—PL 44-723.

¹¹ *De Bono Conjugali*, cap. 6, cap. 10—PL 40-377, 380; *De Nuptiis et Concupiscentia*, lib. I, cap. 15—PL 44-423; *Contra Julianum*, lib. V, cap. 16—PL 44-816; and in numerous other passages.

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If not sinful (*venialiter*), why did it require any indulgence (*venia*)?¹²

On the other hand St. Augustine, surprisingly, could not make up his mind how to answer the following question: When a married woman is found to be sterile may her husband with her consent have intercourse with some other woman in order to raise up children? In spite of Old Testament precedents, he argues against this, but hesitates to settle the question.¹³ And he was of the opinion that an unmarried woman who has intercourse only in order to have children was to be preferred to those married women who, because of their concupiscence and not from a desire of children, insist on intercourse with their reluctant husbands.¹⁴ St. Augustine never pretended to solve all the difficult problems that the theology of marriage involves. He confessed that the question of marriage was so obscure and complex that he had never been able to explain all its intricacies.¹⁵

During the centuries that followed St. Augustine's time it is clear that his teaching influenced deeply the practical advice which was given to married persons. The Penitentials, those practical manuals of penitential discipline which in

¹² Sheridan, *op. cit.*, p. 2, n. 4 and notes 3 and 4.

¹³ *De Bono Conjugali*, cap. 15—PL 40-385: "Plane uxoris voluntate adhibere aliam, unde communes filii nascentur unius commixtione et semine, alterius autem jure ac potestate, apud antiquos patres fas erat; utrum et nunc fas sit, non temere dixerim."

¹⁴ *De Bono Conjugali*, cap. 15—PL 40-377.: St. Augustine is speaking of a temporary sexual union, which the man intends to give up later in favor of a real wife. Of the female companion, in this arrangement he says: "Jamvero si ex illo concubitu, quantum ad ipsam attinet, non nisi filios velit, et quidquid ultra causam procreandi patitur invita patiat: multis quidem ista matronis anteposenda est; quae tametsi non sunt adulterae, viros tamen suos plerumque, etiam continere cupientes, ad reddendum carnale debitum cogunt, non desiderio proles, sed ardore concupiscentiae ipso suo jure intemperanter utentes: in quarum tamen nuptiis bonum est hoc ipsum quod nuptae sunt."

¹⁵ *De Conjugiis Adulterinis*, lib. I, cap. 25, n. 32—PL 40-469. See Chapter 3, p. 40.

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the early middle ages supplanted the discipline of public penance and were the priests' vademecum in some parts of Western Europe, contain many injunctions which follow St. Augustine's teaching closely.¹⁶ For instance, in the Penitential of Finnian, an Irish monk of the sixth century, we read: "If anyone has a barren wife, he shall not put away his wife because of her barrenness, but they shall both dwell in continence and be blessed if they persevere in chastity of body until God pronounces a true and just judgment upon them."¹⁷

In the early ninth century the Penitential attributed to the Irish Abbot Cummean (circa 650) was widely used in the Frankish Empire.¹⁸ He makes this rule: "In the case of one whose wife is barren, both he and she shall live in continence."¹⁹ He likewise demands continence during three forty day periods in each year, "and on Saturday and Sunday, night and day, and on the two appointed week-days [i.e., Wednesday and Friday] and after conception and during the entire menstrual period. After a birth he shall abstain, if it is a son, for 33 [days]; if a daughter, for 66 [days]."²⁰

The famous Penitential of Theodore, written at the close of the seventh century but still enjoying high authority in the tenth, makes similar rules, but Theodore demands abstinence in pregnancy only during the last three months.²¹ The tenth century Penitential of Regino, Abbot of Prüm in Lorraine, and the very influential *Corrector* of Burchard of Worms (eleventh century) which later was the partial basis

¹⁶ John F. McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York, Columbia University Press, 1938), *passim*.

¹⁷ *Op. cit.*, p. 95.

¹⁸ *Op. cit.*, p. 98.

¹⁹ *Op. cit.*, p. 105.

²⁰ *Ibid.*

²¹ *Op. cit.*, p. 208; cf. also p. 197 and p. 211.

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of St. Charles Borromeo's Penitential, have similar prescriptions.²²

These Penitentials do not represent the universal teaching of the Catholic Church. They were the work of private doctors and their authority and orthodoxy varied immensely more than that of our modern manuals of moral theology. Later on the Penitentials fell into disrepute and were even denounced by bishops and particular councils.²³ But they are witness to the kind of practical rules of conduct given by many priests to many married penitents over a long period of time.

The influence of St. Augustine is still very apparent in the scholastics of the classical period. For instance, St. Albert the Great commenting on Peter Lombard's *Liber Sententiarum* follows closely St. Augustine's ideas both as to the evil of concupiscence and the restraints to be placed on married intercourse.²⁴ He teaches explicitly that marital union to satisfy concupiscence is either venially or mortally sinful.²⁵ As to intercourse on communion days St. Albert taught: "During the day of reception the *debitum* is not to be sought or granted unless the other party is very insistent. If, however, consummation takes place I do not believe it is a mortal sin."²⁶ St. Albert considers intercourse during pregnancy to be venially sinful, basing his opinion, however, partly on the danger of causing abortion.²⁷ And he apparently believes intercourse by those who know they are sterile to be venially sinful.²⁸

²² Op. cit., pp. 318, 329, 363.

²³ Op. cit., p. 27.

²⁴ John J. Clifford, S.J., "The Ethics of Conjugal Intimacy According to St. Albert the Great," *Theological Studies*. 3 (1942), p. 1 ff.

²⁵ Art. cit., p. 11.

²⁶ Art. cit., p. 22.

²⁷ Ibid.

²⁸ This seems to follow from all his principles in the matter and from

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St. Thomas, too, teaches that "there are only two ways in which married people are free from all sin in intercourse, to wit, by reason of procreating and by reason of rendering the *debitum*: otherwise there is always sin in it at least venial."²⁹ St. Thomas follows St. Albert closely both in his practical conclusions and in the reasons with which he supports them.³⁰ His great contribution to the eventual development of the theology of marital intimacy was his evaluation of the place of the sensitive appetite in human nature, his explanation of the transmission of original sin without having recourse to the instrumentality of sexual concupiscence, and his theology of passions and pleasures.³¹

It took many centuries before these fundamental conceptions bore fruit in the practical solutions of problems of conjugal intimacy. One hundred and fifty years after St. Thomas' time the popular Franciscan preacher, St. Bernardine of Siena (d. 1444), preached to the people on marriage in terms which, after making due allowance for rhetorical exaggeration, still strike us as very severe today. He imposed a strict obligation to abstain from the use of

some of his applications as explained in Father Clifford's article, cited in note 24.

²⁹ Suppl., q. 49, art. 5, corp.

³⁰ Op. cit., q. 49, art. 6, corp; q. 64, art. 7, corp. and art. 8. corp. Underlying the thought of the scholastics of this period was the difficulty against the use of marriage urged by the heretics called "Patemiani." They reprobated all marriage relations as sinful because in the climax of intercourse reason was absorbed and, as it were, temporarily deposed. The scholastics, for instance, St. Albert and St. Thomas, did not deny that during the moments of orgasm the use of reason is deposed. They readily admitted it. But they answered that reason can regulate the preliminaries of intercourse and thus the act itself was sufficiently regulated by reason, while the temporary absorption of reason was excused by the *bona matrimonii*. Cf. St. Thomas, Suppl., q. 41, art. 3, ad 6; q. 49, art. 1, corp.; and q. 49 art. 4, ad 1. For citations from St. Albert, cf. Clifford, art. cit., p. 3.

³¹ See Sheridan, op. cit., p. 3. On Scotus' contribution to this development, see Claude Schahl, O.F.M., *La doctrine des fins du mariage dans la théologie scholastique* (Paris: Editions Franciscaines, 1948), p. 149, note.

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marriage on days of penance, on great feasts, and before receiving Holy Communion.³²

During the post-classical period, however, there gradually came to be recognized other legitimate motives for intercourse in addition to *prolis* and the *debitum*, namely the avoidance of incontinence in oneself, and the motive of maintaining or recovering health, this latter motive being regarded as legitimate in some circumstances by a few authors.

But sexual pleasure itself continued to be regarded for a long time as something shameful and unworthy, if not in itself at least in its effects. And so it was not considered a proper object of truly human volition. But the metaphysical and theological groundwork had been laid for a more permissive attitude:

Among the later scholastics, in the fifteenth and early sixteenth centuries, there is observable a distinctly less condemnatory attitude. Cajetan (1468-1534) even calls the pleasure a gift of God, and we find such forerunners of the seventeenth century "laxists" as Almaynus and Major, who even defend the liceity of the motive of pleasure, apparently independently of any other effective *finis agentis*.³³

The seventeenth century has been called the Golden Age

³² Cf. Anscar Parsons, O.F.M. Cap., "St. Bernadine of Siena and Chaste Wedlock," *Homiletic and Pastoral Review*, 45 (Dec. 1944), p. 196 ff.

³³ Sheridan, ms., Conclusion, p. 3. We are indebted to Edward F. Sheridan, S.J. for use of manuscript material not yet published from his important historico-theologico study, *The Morality of the Pleasure Motive in the Use of Marriage*. Parts of this scholarly work dealing with the theologians of the seventeenth and eighteenth centuries and the propositions condemned by Innocent XI (Denzinger-Bannwart, 1158, 1159) have already been published under the above title by the Gregorian University Press, Rome, 1947. In the following pages we draw on some of Fr. Sheridan's unpublished manuscript.

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of moral theology. It was during this century that many great moralists with quite divergent views examined the question of conjugal intimacy with particular reference to the pleasure motive.

The seventeenth century shows many modifications of the existing trend towards a more benign doctrine. A group in which the Dominican doctors are most important seem satisfied with the advances which have been made, and in some points show a reactionary tendency. Thus, the marriage act is justified by two motives only, *procreatio prolis* and *redditio debiti*. However, the intention of these ends is not necessarily actual, but may be virtual. Even the virtual intention in its strict sense is hardly required and some general habitual intention of acting reasonably seems sufficient. How this constitutes a virtual intention of generation is not explained, and probably in practice little more was demanded than objective rectitude of the act and non-exclusion of procreation. Other theologians headed by Thomas Sanchez admit, in certain circumstances, the liceity of the motives of health or *remedium concupiscentiae*, and expressly deny the necessity of any explicit intention of these honest ends, admitting the sufficiency of the intention "*copulandi uxori tanquam uxori*." Further precision of this latter phrase is generally lacking. Finally some writers such as de Coninck openly equate the sex act to any other act, and recognize the liceity of any honest motive.³⁴

A passage in Aegidius de Coninck, S.J. (1633), which clearly involves a departure from the narrower views of his predecessors and foreshadows the common teaching of to-day, runs as follows:

Although anything from God as the author of nature is in-

³⁴ Sheridan, ms., Conclusion, p. 3.

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stituted principally for some definite end, yet it is also instituted, at least secondarily, for whatever legitimate [honestos] ends it is capable of achieving . . . and accordingly, even when we omit altogether the primary end of these things, we can use them for all legitimate ends of this kind; for on no heading can it be shown that any reason obliges us always to use every creature to achieve its principal end, or to intend this end principally: especially when we do not positively prevent this end from happening.³⁵

During the first part of this seventeenth century, at the same time that these developments were taking place, a few authors, notably Estius (1613) and Sylvius (1649), in opposition to the liberalizing trend, adopted a reactionary and incredibly rigoristic view of sexual pleasure in marriage:

The pleasure is to be tolerated reluctantly, hardly to be consented to, certainly not willed, and it is obviously no licit motive, even partial, for the position of the marriage act. The pleasure is immoderate, shameful and brutal and needs nothing more than consent to become formally sinful.³⁶

However, the general movement was in the opposite direction. In fact some authors began to go too far by defending the position that sexual pleasure in marriage might be chosen as an end independently of any subjective or objective ordination to some higher end. As a result there followed the famous condemned propositions of Innocent XI:

To eat and drink to satiety for pleasure alone is not a sin

³⁵ *De sacramentis et censuris* (Antwerpiae, 1616), disp. 25, n. 12 f; cf. disp. 34, dub. 1, n. 10, cited by Sheridan, *The Morality of the Pleasure Motive in the Use of Marriage* (Rome: Gregorian University Press, 1947), p. 15, note 2.

³⁶ Sheridan, ms., Conclusion, p. 4.

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as long as it is not contrary to health: because a natural appetite can licitly enjoy its acts.

The marriage act performed for pleasure alone is free of every least fault and venial defect.³⁷

There is considerable difficulty in estimating the practical force of these condemnations, and we shall return to the topic later. But they did have the effect of putting a check on extreme views and incautious expressions. At the same time orthodox moralists still felt free to continue teaching the more moderate views of Thomas Sanchez, de Coninck and the Salmanticenses. Even after the condemnations some authors continued to teach that it was enough if one did not exclude *motivos honestos*, and that these motives were contained virtually (almost, as it were, *pondere suo*) in the nature of the marriage act or in the original intention of the spouses when entering marriage.

However, the proscriptions of Innocent XI seem also to have been used by the rigorists to support their position, and theologians who opposed such rigorism were hampered by the danger of being interpreted (misinterpretation, not always honest, was one of the besetting sins of the times) as opposing the pronouncements of the Holy See. The result was that the rigorist opinion flourished and acquired an ascendancy [during the seventeen hundreds] which undid much of the genuinely good work of the previous century. The impression that sexual activity and sexual pleasure were *de se* shameful but unfortunately necessary for the perpetuation of the species, was extended, though its extreme form as proposed by Estius and

³⁷ "Comedere et bibere usque ad satietatem ob solam voluptatem non est peccatum modo non obsit valetudini: quia licite potest appetitus naturalis suis actibus frui." "Opus conjugii ob solam voluptatem exercitum omni penitus caret culpa ac defectu veniali." Denzinger-Rahner, *Enchiridion Symbolorum* (Barcelona, Rome, Friburg: Herder, 1957, ed. 31a) n. 1158, 1159.

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Sylvius never gained any widespread acceptance. This attitude resulted in an increased demand for an intention of an honest end other than the act or its pleasure for perfect liceity. Though an actual or explicit intention was not demanded, it was generally felt that the end of procreation, *remedium concupiscentiae* or some such motive should play a moving role in this activity.³⁸

Only about two hundred years ago Eusebius Amort, still under the influence of St. Augustine, taught that intercourse during pregnancy was at least venially sinful, and showed by a long and cogent catena of opinions from the Fathers that this was undoubtedly their opinion.³⁹ St. Alphonsus and his followers at the end of the seventeen hundreds and the first half of the eighteen hundreds still insisted on the necessity of a virtual intention of an end other than pleasure for complete lawfulness in the use of marriage.⁴⁰

However, the writers of the time are vague in their explanations of this virtual intention, as though appreciating the difficulty of finding it realized in practice, even in acts which they would hesitate to call sinful. In effect the common doctrine demanded little more than Sanchez earlier, or Ballerini later demanded, but was couched in language which was more exigent than those theologians used. As a result, when Ballerini propounded much the same doctrine as was commonly held, but in terminology which approximated that of the 17th century moralists, he was

³⁸ Sheridan, ms., Conclusion, p. 5.

³⁹ Amort, *Theologia Moralis*, Appendix ad Tractatum de Matrimonio (Augustae Vindelicarum: 1752). In the nineteenth century this opinion became entirely obsolete and we hear no more of it today. For the history of this opinion cf. Dominikus Lindner, *Der Usus Matrimonii, Seine sittliche Bewertung in der Katholischen Moraltheologie alter und neuer Zeit*, (Munich: Kösel und Pustet, 1929).

⁴⁰ Sheridan, *The Morality of the Pleasure Motive in the Use of Marriage* (Rome, Gregorian University Press, 1947), p. 53.

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regarded by the *Vindiciae* [*Alphonsianae*] as an innovator and as falling under the ban of Innocent's condemnations. But under terminological differences, Ballerini so clearly expressed the common opinion in a form easily understood and readily applied, that practically all subsequent moralists have adopted his interpretation of the condemnations, even those who demanded some virtual and effective intention of an end other than pleasure in their general doctrine *de actibus humanis*.

In effect, most modern manuals seem to concede that the act of intercourse is not *per se illicit*, even venially, even though the effective motive be the desire to enjoy the pleasure of the act, as long as the latter be ordinally placed, i.e., not frustrated or vitiated by any untoward objective circumstance. In such cases the desire for pleasure is the motive, and in a sense the sole motive; however, pleasure may not licitly be the ultimate end, ungoverned and unrestricted by any other, subordinate to no higher law, a measure unmeasured by reason and right order. The end is pleasure, sought in an object and circumstances habitually appreciated as licit and reasonable. As pleasure it moves but only as reasonable or licit pleasure is it consented to, elected and realized. As Vermeersch expressed it: it is pleasure-not-wrong and not pleasure-tout-court which is the end and motive.⁴¹

As we have seen, the morality of the pleasure motive is inextricably intertwined with the problem of the ends of marriage and the subordination of the secondary ends to the primary end. But during the nineteenth and twentieth centuries the secondary ends of marriage have been treated as having a value of their own. It is now universally conceded that it is permissible to use marriage to seek their fulfillment even when the primary end is unattainable, as long

⁴¹ Sheridan, ms., Conclusion, pp. 5, 6. See Conan Gallagher, M.S.S.S.T., "Sexual Pleasure: Its Proper Setting in Christian Marriage," *American Ecclesiastical Review*, 146 (May 1962), 315-326.

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as their essential subordination to the primary end is recognized and observed. In practice this means principally that the natural physical integrity of the marriage act and generative faculty be preserved and the affirmative obligation to procreate be fulfilled. In other words conjugal relations are permissible whether the purpose of the partners is procreation or not as long as unnatural acts, sterilizing acts and the undue danger of separate orgasm is avoided.⁴² This point of view, commonly accepted by moralists, is confirmed by a document of the highest authority, the Encyclical *Casti Connubii* of Pius XI, which approves the use of marriage for the sterile, and during the sterile period, and makes no mention of abstinence during pregnancy, teaching that the secondary ends of marriage are also legitimate motives for its sexual use, and explicitly including conjugal love among the ends of the marriage act itself.⁴³

Aside from strictly theological considerations, it would appear that the modern discoveries of physiological and psychological science have influenced the thinking of the theologians.⁴⁴ The existence and function of spermatazoa and ova are comparatively recent findings. For instance, spermatazoa were first discovered in 1677 and it was in 1875 that Oscar Hertwig demonstrated their function.⁴⁵ As a result of this new knowledge it became apparent that the relation be-

⁴² Cf. John C. Ford, S.J., "Marriage: Its Meaning and Purposes," *Theological Studies*, 3 (1942), 369.

⁴³ AAS, 22 (1930), 539-592 at 561.

⁴⁴ See Bernard Lonergan, S.J., "Finality, Love, Marriage," *Theological Studies*, 4 (1943) 477 ff. Compare Doms, *The Meaning of Marriage*, p. 8, p. 21 ff., (New York, Sheed and Ward, 1939). The chapter on St. Thomas' view of the ends of marriage is omitted in this English translation. The French translation, *Du Sens et de la fin de mariage* (Paris: Descleé, 1937, 2nd French edition), contains this criticism of St. Thomas by Dr. Doms. See p. 85 ff., especially at p. 101 for the biological question.

⁴⁵ Edward H. Nowlan, S.J., "Double Vasectomy and Marital Impotence," *Theological Studies*, 6 (1945), 392-427, at 400.

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tween intercourse and conception was not so direct and immediate in the physical order as had previously been thought. This may explain partially the modern tendency to emphasize the lawfulness of intercourse for purposes other than procreation and rendering the debitum as long as the essential subordination of the act to the primary end is maintained.

As for psychological aspects, let us quote again Fr. Sheridan:

The work of modern psychiatrists, though many of them are prone to exaggerate the sexual element in the subconscious and build on a false materialistic basis, has at least the merit of having contributed to the recognition of a natural and normal sexual appetite which looks directly to enjoyment and only indirectly to generation. It is generally admitted that for some persons, particularly among those joined in the provocative intimacies of conjugal life, some satisfaction of the sexual appetite is an ordinary condition of sound psychic and physical health. This is an aspect of our subject which was untouched by earlier moralists, for when they considered the case of intercourse *propter sanitatem* they were looking not to any hygienic effect of the *pleasure* but of the act, and were considering the matter purely physiologically and not psychologically. The idea probably stemmed from the common conception of the *semen generativum* as a superfluity, capable of corruption if contained within the body. It does not affect our consideration that this healthy and happy psychological state may be otherwise safeguarded by a process of sublimation, etc. A natural means indicated is moderate satisfaction within the marital society. Thus it appears that the *pleasure* of intercourse objectively ordinate may be licitly and honestly sought as a *useful good* (useful because pleasurable and satisfying). Nor is it clear why this further end of a healthy psychology should be any more conscious to

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the agent than the end of nutrition in the case of a man who, in moderation, selects a meal of his favorite dishes from a generous menu. If asked why he placed the [marriage] act, the agent would probably answer that it was for pleasure. If asked why he wanted the pleasure, he might be somewhat at a loss for an answer, but would probably try to convey the idea that the pleasure filled a need, was necessary to avoid a feeling of frustration, nervous strain, bad temper, a general physical and psychic malaise destructive of any true happiness in conjugal society. This view of venereal pleasure in moderation, as a useful and convenient good, is not encountered in earlier theologians, who on the contrary saw in the act only disadvantages of both a physical and psychic character.⁴⁶

But whatever reasons, theological, physiological and psychological, may account for the stage of development which we have reached today, it is clear from Pius XI's *Casti Connubii* that all the secondary ends of marriage, including the fostering of mutual love, are legitimate motives for the marriage act. And it is clear from Pius XII that the pleasure motive is a legitimate one. He defended sexual pleasure as a genuine value and legitimate motive in married life.⁴⁷ But after going this far Pius XII made haste to repudiate an unwholesome and un-Christian hedonism in the use of marriage. In the following chapter we will discuss this problem of hedonism in the light of our theological principles and the teaching of Pius XII.

⁴⁶ Sheridan, ms., Conclusion, pp. 6, 7.

⁴⁷ AAS, 43 (1951), 835-854 at 850-851; see above Chapter 5, p. 98, note 33.

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PAPUS XII's Address to the Midwives contains many very strong passages; but the strongest of them were reserved to the concluding section on "safeguarding human dignity in the use of the generative instinct." The Pope warns about the necessity of "due moderation" in marital relations and against yielding "without restraint to the impulse of the senses." "Even though an action may be licit in substance," he says, "it is possible to sin in the manner of its performance." Still later he speaks of a pleasure-loving spirit, an anti-Christian hedonism,

urging the pursuit of the intensest possible enjoyment in the preliminaries to marital intercourse and in its consummation; as though in this sphere the moral law enjoined nothing more than that the act itself be accomplished normally, and as though the rest, in whatever manner done, could be justified as being an expression of mutual love which is sanctified by the sacrament of matrimony and deserves praise and reward in the

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eyes of God and conscience. The dignity of the human being, the dignity of the Christian, which sets a check on sexual excess, is left out of account.

Also, this hedonism is described as the pursuit of "pleasure and enjoyment alone." And finally, throughout this concluding section of the allocution, as in a previous one to the French fathers of families, he refers to hedonism as an attitude which makes of sexual pleasure an end in itself, whereas, it is "only a means to be used in the service of life."¹

The background of these papal remarks is undoubtedly the publication, even by Catholics, of literature on conjugal life which airs its secrets for everyone to read and which unduly exalts the function of sense pleasure in marriage. Since France was apparently the most fertile source of such literature, the Pope had taken occasion to speak about it in an allocution to French fathers of families about a month previous to the Address to the Midwives. Some pertinent paragraphs from this previous discourse will help to give the proper perspective to this chapter. After excoriating these writers for violating the traditional rules of reticence by their detailed and sensual descriptions of conjugal intimacy, the Pope said:

And that is not all. This propaganda still threatens Catholics with a double scourge, not to use a stronger term. In the first place, it exaggerates beyond all measure the importance and scope of the sexual element in life. Let us grant that these authors, from a purely theoretical point of view, still remain within the limits of Catholic morality; it is nonetheless true that their manner of explaining sexual life is of such a nature as to give

¹ All these quotations are from the Address to the Midwives, AAS, 43 (1951), 835-854.

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it, in the mind of the average reader and in his practical judgment, the meaning and value of an end in itself. It makes him lose sight of the true original end of marriage, which is the procreation and rearing of children, and of the grave duty of married persons toward this end, which the writings we are speaking of leave too much in the shade.

Secondly, this so-called literature seems to take no account of the general experience of yesterday, today and always, an experience founded on nature, which proves that, in moral training, neither instruction nor initiation offers any advantage of itself. On the contrary, it is seriously unhealthy and prejudicial unless closely bound to constant discipline, vigorous mastery of oneself, and, above all, to the use of supernatural forces—prayer and the sacraments. All Catholic teachers worthy of their name and mission are well aware of the preponderant role of supernatural forces in the sanctification of man, be he young or old, bachelor or married. Of these supernatural forces scarcely a word is whispered in the literature of which We speak; they are usually passed over in silence.²

Much more—in fact the entire concluding section of the Address to the Midwives—might be quoted here. The foregoing, however, seems to be enough for our purpose. It points to a serious problem that has arisen in the consciences of devout married people. This problem, to put it simply, is confusion regarding the place of physical pleasure in their marital intimacies. This is not surprising. Despite the fact that the papal allocution was addressed to obstetrical nurses (who were hardly philosophers or theologians), much of it was couched in technical theological language. Nevertheless, it has been published far and wide, even in the daily newspapers and in popular pamphlets. Since even

² AAS, 43 (1951), 730-734 at 733, 734.

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philosophers and theologians have had more than a little difficulty in interpreting some sections of it, it is not surprising that the laity would have even greater difficulty and that, in the case of the devout married, the more puzzling problems would concern the section dealing with pleasure in the use of marriage.

The theologian who reads carefully the concluding section of the Address to the Midwives immediately recalls the proposition, condemned almost three centuries previously by Innocent XI, "The marriage act performed for pleasure alone, is free of every least fault and venial defect."³ Since that time theologians have developed much more optimistic views as to the positive and personal values in the sexual use of marriage. Pius XII shared these views, as this very allocution shows.⁴ But at this point it is almost as though he were warning that now we have gone far enough. He seems to be repeating the ancient condemnation and with emphasis.

The theologian also recalls, not without some degree of discouragement, the historic difficulties in giving a reasonable interpretation to Innocent's condemned proposition. In the first place, there is the fact that the whole group of sixty-five propositions were condemned *in globo*, as being "at the very least scandalous and in practice pernicious."⁵ No precise note or theological censure can be attached to any proposition; and none of the propositions need be "erroneous." Moreover, as regards proposition 9 (of which we are speaking) the difficulty of interpretation is enhanced by the diversity of theological views concerning the in-

³ Denzinger-Rahner, *Enchiridion Symbolorum* (Barcelona, Rome, Friburg: Herder, 1957, ed. 31a) n. 1159. See above Chapter 9, p. 182 f.

⁴ AAS, 43 (1951), 835-854 at 850, 851; quoted above Chapter 5, p. 98.

⁵ Denzinger-Rahner, *op. cit.*, after n. 1215.

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herent moral quality of marriage and the marriage act, concerning the possibility of having morally indifferent acts *in concreto*, concerning the requisite *finis operantis* for a morally good act and for supernatural merit, and so forth. These difficulties are fewer today than formerly; but they have not been sufficiently resolved for anyone to say that there exists in Catholic theology a truly common opinion concerning the general question of acting *ob solam voluptatem*, or concerning the particular application of this matter to the *finis operantis* of conjugal intimacy.

It would obviously be impossible for us to try to filter through the centuries of debates, real and verbal, on these many questions; and it would be almost equally impossible to offer a coherent presentation of the conflicting views concerning the meaning of Innocent's condemnation of proposition 9. But we are on perfectly safe ground in saying it is theologically and pastorally tenable that spouses do not act *ob solam voluptatem* when, though their sole explicit and conscious motive in exercising their marital intimacies is pleasure, they actually do nothing contrary to the norm that enjoyment is subordinate to action.

For centuries it has been asserted that God and nature have attached sexual pleasure to the generative act as an inducement to men to propagate. Thus God provides for the good of the species. Granting, for the sake of the argument, that this is so, we would like to make this comment. If sexual pleasure is to serve as an inducement to propagate, then God must want men to choose the act because of the pleasure, not the other way round. 'If they were to choose the pleasure because of the act (a process psychologically difficult to envision), the pleasure would not be an inducement

⁶ See Edward F. Sheridan, S.J., *The Morality of the Pleasure Motive in*

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at all. The older authors seemed oblivious of this psychological aspect of the matter.

But to choose the act because of the pleasure is by no means to act *ob solam voluptatem*, or to subordinate the act to the pleasure. When one responds as God intended to an inducement which by a "pleasant conspiracy of nature" serves the purposes of marriage and the good of the species, one is not inverting the order of nature; one is observing it. To us this remark seems to confirm the position that those who consciously act for the pleasure of sexual intercourse, apprehended as something permissible, need no further explicit legitimating motive to escape the imputation of acting *ob solam voluptatem*. In other words, if their conduct in marital intimacies is such that it preserves the inherent purposes or values which belong to conjugal intimacy, the pleasure they seek is well-ordered; they cannot be said to be acting *ob solam voluptatem*.

The conjugal act is primarily procreative; but it is also an expression of love, a safeguard of chastity, a debt of justice. Moreover, it not only expresses love, but fosters it, and this not merely in the sphere of sense, but also in the spiritual order; and because of this it fosters the union of souls that should prevail throughout every aspect of the conjugal life-partnership. Finally, as pointed out previously, the moderate exercise of conjugal intimacies serves as a relief of tension, and in this way, too, makes for a greater harmony in married life, for greater contentment and peace.

When conjugal intimacies are exercised in such a way that these values, as well as their natural interdependence, are preserved, the spouses cannot be said to be acting *ob*

the Use of Marriage, ms. Conclusion, pp. 6, 7 (Cf. Chapter 5, note 37, and Chapter 9, note 33).

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solam voluptatem, even though their sole explicit and conscious motive is pleasure. In such conduct, therefore, there is no hedonism, in the sense of something clearly sinful. It is possible however, that their exaggerated desire for pleasure may be such as to frustrate the higher values of Christian asceticism; such exaggeration, though falling short of any sin, can be said to be hedonistic.

Hedonism is not a specific sin. Rather it is a vice; and like many vices (e.g., selfishness, laziness, pride) it may be the direct source of sinful acts or it may operate in a subtler way by fostering a self-indulgence which undermines Christian detachment, or jeopardizes the spirit of renunciation and other-worldliness called for by the doctrine of the Cross. We believe that this distinction may offer some light on the remarks made by Pius XII to the midwives and to the French fathers of families. At times the Pope is speaking of a pleasure-loving attitude which is directly productive of sin in the exercise of conjugal intimacies; and at other times he is speaking in broader terms of a mentality which, though not directly involving sinful conduct, is contrary to the Christian spirit that should be the guiding light of those who are married in Christ. Obviously this latter mentality, though not immediately the source of sin, may eventually endanger the strict obligations of married life and lead even to grossly sinful conduct. In a word hedonism may mean something anti-Christian, that is, conduct which is actually sinful; and it may mean something un-Christian, that is, inordinate as being more or less profoundly at variance with the pursuit of Christian perfection. Some such distinction as this seems to be implicit in Pius XII's remarks on human dignity in conjugal relations, though he himself uses the term "anti-Christian" to embrace both kinds of hedonism.

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ANTI-CHRISTIAN HEDONISM

As a preliminary observation we call attention to the question disputed among theologians, whether there is a real distinction between a positive imperfection and a venial sin. We consider that there is such a distinction. In our view, therefore, a sin is committed only when some real precept, and not merely a counsel, is transgressed. As applied to married life, this means that hedonism is sinful and anti-Christian when pleasure-seeking leads to the violation of a duty, in the strict sense of the word. The duties we are considering are those that pertain to the exercise of conjugal intimacy; but here too some restriction must be made. We are limiting our discussion to sins that might be committed precisely in their mutual sex relations. We are not considering solitary sins or conjugal infidelity.

The duties that are directly pertinent to the exercise of conjugal intimacies may be grouped under these heads: (a) procreation; (b) *remedium concupiscentiae*; (c) justice and conjugal love. A brief résumé of the main duties will help to show how pleasure-seeking may lead directly to a violation of one or more of the duties and thus be sinful.

a) *Procreation*. The main duties pertinent to this primary end of marriage are expressed in the negative precept: do nothing to destroy the natural structure of the generative faculty or of the sex act or to frustrate their effects; and the affirmative precept: married couples, at least those who use their conjugal rights regularly and completely, must per se make some contribution to the preservation of the race. Obvious violations of these precepts are contraception in its various forms and the unjustifiable use of rhythm. In later chapters we shall discuss contraception, the affirmative duty of contributing to the preservation of the race, and the relation of the use of rhythm to this duty.

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b) *Remedium concupiscentiae*. The use of marital intimacies is supposed to be a protection of chastity and a relief from the tensions that may be imposed by continence in marriage. This purpose is frustrated by any conduct which involves the unjustifiable risking of orgasm apart from intercourse, or which involves the use of incomplete intimacies to the point of leaving either party (contrary to his or her will) tense and unsatisfied. There is sinful hedonism when pleasure-seeking leads to such abuses.

A word of explanation is in place concerning the expression "unjustifiable risking of orgasm apart from intercourse." It is the common teaching of theologians that, when the husband has his orgasm during coitus but before the wife has reached her climax, stimulation of the wife may continue until she has orgasm. The reason given for this is that there is at least a moral unity between her orgasm and coitus; hence the orgasm is not considered to be outside of intercourse. To follow this opinion is not only not hedonistic; it is both morally and psychologically advisable, and when married couples ask about such matters, they should be advised accordingly. This is a very practical problem especially at the beginning of marriage.

Another problem that is not uncommon in the early months of marriage is that of premature ejaculation on the part of the husband. It may take some time before he learns to control the ejaculatory processes during the love-play preliminary to intercourse; and during this time, while both he and his wife are trying to do the right thing, they would not be considered to be unjustifiably risking orgasm outside of intercourse. And a somewhat similar situation may arise during the various periods (e.g., just before and after childbirth) when physicians advise abstaining from intercourse. During these periods they are entitled at least to incom-

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plete sexual acts; and these acts often have a special value and significance for their mutual love. Nevertheless, until they have learned to adjust to such situations, they may unintentionally become too strongly excited and orgasm without coitus may take place. According to sound principles, this is not sinful provided the orgasm is sincerely not intended or wanted, and no imprudent risk is taken.⁷

It is not easy to define just what constitutes imprudence in these situations, because personalities and the situations themselves differ greatly. But certainly some degree of risk is permissible on these occasions; and to take that justifiable risk is not hedonistic. Perhaps a good practical rule to give married couples who bring up these problems, especially after the initial adjustments have been made, is this: when an unintended orgasm happens only occasionally, this is a fairly good sign that no imprudence is involved; but when it happens frequently in the same circumstances, this very likely indicates that a really sincere desire to avoid it is lacking, and that one is acting imprudently by not practicing greater restraint. This would be a good example of ill-regulated pleasure-seeking, that is, sinful hedonism. And to do this with real recklessness would be mortally sinful.

c) *Justice and charity.* We have combined these two because in concrete cases, it might often be difficult to determine when the conduct of husband and wife might actually violate justice, whereas it is comparatively easy to suggest

⁷ Deliberate consent to orgasm outside intercourse, even when the latter occurs indeliberately, is objectively a grave sin. But it is not always possible to convey this truth to the ordinary penitent. And even when possible to do so it is not always wise or useful to do so. If the only result of making known this principle will be to change material sins to formal it is better to omit mention of it. "Multi coniuges peccatum non apprehendunt in consensu in pollutionem quae praeter eorum intentionem sequatur. Quare generatim facile relinquentur in bona fide, cum plerumque monitio nihil proficeret." Regatillo-Zalba, *Theologiae Moralis Summa* (Madrid: B.A.C., 1954) III, 979, 3.

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some examples in which there would certainly be at least a violation of charity. As rather general practical principles governing conjugal intimacies and their relation to justice and charity, we might state: (1) that each party is obliged to grant the reasonable and serious requests of the other; and (2) that each is obliged to avoid conduct that causes the other unnecessary pain and repugnance.

As regards the first of these rules, the main point here is the problem of "unreasonable" requests for intercourse or other intimacies, because, if the seeking of one's personal pleasure is carried to the point of insisting on unreasonable requests, this is certainly sinful hedonism. Examples of such sinful insistence might be: when the other party is seriously ill; when there would be a real danger to the child in the womb; when there would be danger of incurring an infection; when the one who makes the request is intoxicated.

The foregoing seem to be rather clear examples of unreasonable requests. There are other situations in which there may be a little unreasonableness in a request, as well as a little unreasonableness in a refusal. Confessors should keep in mind that the marriage debt is not at all the same as other debts. A wife certainly cannot excuse herself from paying the grocery bill merely because she feels irritable; personal feelings make no difference in the payment of such debts. But personal feelings play a crucial part in marital relations. Hence, though a wife may not be perfectly justified in refusing intercourse or participation in preliminary intimacies because she is "not in the mood," yet a husband would hardly be justified in simply urging his right without regard to her feelings. There has to be mutual considerateness in a case like this and some reasonable attempt at a happy compromise. A husband whose desire for pleasure is so dominant that he would refuse to bide his time and to

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try to bring his wife to a cheerful acquiescence would be hedonistic; and the wife who would refuse to be won over would be sinning through the opposite vice of insensitivity.

A brief word about our second practical principle: that neither should cause the other unnecessary pain or repugnance. It is possible that for a short time after marriage intercourse might be painful, especially for the bride. Pre-marital consultation with a good physician can prevent this to some extent, if not entirely. And, when it cannot be entirely prevented, mutual considerateness can diminish it until the proper adjustment is made. Also, at the beginning of marriage, and especially in the case of those who have led very chaste lives, even ordinary intimacies may cause some repugnance. Here again penitents should be advised that mutual considerateness will solve the problem and help to make the repugnance disappear. But sometimes they need a marriage counsellor.

In situations such as these, granted the proper attitude of sympathy, neither pain nor repugnance is caused unnecessarily. But aside from these ordinary problems, it is sometimes necessary to remind married persons that people differ greatly in their ways of expressing love, and that what pleases one might be distasteful to another; also, that men differ greatly from women in their sexual reactions and in their physical desires. Because of the diversity of desires, there must be some mutual compromise. One who refuses to make such a compromise and who, through the seeking of physical pleasure rather than the desire to express real affection, would insist on methods of love-making that offend the reasonable sensibilities of the other, would be uncharitable and would be using marital intimacies contrary

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to their purpose of fostering mutual love. It is possible to sin gravely against conjugal charity in this regard.

UN-CHRISTIAN HEDONISM

What we have said about anti-Christian hedonism can be briefly summarized as follows: pleasure-seeking is sinful when it involves the violation of a duty in the strict sense, that is, the violation of an obligation binding under pain of sin. But, like other vices, hedonism can be present when there is no question of sin either mortal or venial. Thus, to use the example of other vices: it is at least theoretically possible that a person may fulfill all his strict obligations, yet through laziness or selfishness refuse to do any more than that. Perhaps this may be a practical impossibility because one who aims at doing what he has to do and no more will hardly hold the line at even that minimum. Our actual accomplishments usually fall short of our aims; hence, the man who aims only at doing his duty will usually violate some duty. If this is true of human life in general, it is especially true of those spheres of life in which pleasure is involved, and true most of all in conjugal intimacy because of the absorbing nature of sexual pleasure.

We may take it as practically true, therefore, that some degree of Christian asceticism, some renunciation of bodily pleasures, is necessary in order to safeguard oneself from sin, at least from venial sin. But we do not wish to stress this point here. A vice would still be a vice if it left these strict obligations untouched but undermined or weakened the superstructure of Christian perfection. A Christian cannot follow wholeheartedly in the footsteps of Christ without embracing the Cross of Christ.

Much of the literature about the "vices" or the "capital

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sins" refers to vices in this sense, that is, to habitual attitudes or dispositions that are inordinate without being actually sinful. As for hedonism in conjugal relations, it seems quite clear that some of the castigations of Pius XII were directed at hedonism in this sense. Thus, in one of his strongest statements on the subject, he admitted that from a theoretical point of view some authors who propagate this hedonism remain within the limits of Christian morality.⁸ Their error, therefore, seems to be in the sphere of un-Christian hedonism in contradistinction to anti-Christian hedonism.

How is this error to be avoided in practice? What directives can be given to married people to help them steer clear of inordinate pleasure-seeking and achieve Christian holiness in their sexual relations, without falling into the opposite error of despising or repudiating the bodily joys which God Himself has made a part of their vocation?

HOLINESS IN CONJUGAL INTIMACY

We suggest three ascetical counsels, the neglect of which, in our opinion, would constitute un-Christian hedonism, the practice of which can be a help to holiness in the use of sex. The truly Christian use of marriage requires (1) an *appreciation* of the natural and supernatural values of conjugal intimacy; (2) a conscious attempt to *realize* one or more of these values in the exercise of conjugal intimacies; and (3) a *spirit of self-denial* which shows itself in some voluntary abstinence for the love of God from legitimate conjugal pleasures. A mentality which is so much absorbed in seeking the pleasures of sex that it neglects these ascetical counsels is hedonistic, even though it does not result in actual sin.

⁸ Quoted above, p. 189.

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(1) As in all other things illumination of the mind is the necessary prerequisite to truly virtuous action. Hence, married people should be helped to recognize and appreciate the moral and supernatural values of conjugal intercourse. By this we mean an evaluative cognition of all the inherent virtue-values of conjugal intercourse, and especially of its supernatural symbolism: the love of Christ for His Church. Genuine appreciation of this symbolism shows that the love expressed in conjugal intercourse is not merely carnal, not merely emotional, but a deep spiritual union of souls. And it is also seen that this love is not self-seeking, but self-giving, as God gives Himself to the soul, and as Christ gives Himself to the Church.

The parental purposes of marriage are also seen in a more perfect perspective. Christ's love for His Church is a fruitful love; so too is married love. Children are thus desired not merely as fulfillments of maternal and paternal instincts and as citizens of this world, but as children of God and citizens of heaven. In this lies the ultimate meaning of the *bonum proles* as it is to be realized in Christian marriage.

Sexual intercourse considered as a *remedium concupiscentiae* is an act of conjugal chastity and a realization of the *bonum fidei*. This positive value has to be stressed because too often the connotation of *remedium concupiscentiae* is something quite negative, in fact a sort of *minus malum*: "it is better to do this than to sin." On the contrary the sexual fulfillment of the partners is one of the good things conjugal intercourse brings about of its very nature. Sexual intercourse inasmuch as it effects this fulfillment is a positive aspect of the *remedium concupiscentiae*. By giving legitimate scope to sexual expression and by restraining sex within the bonds of fidelity to one another

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intercourse becomes a sexual remedy and a sexual fulfillment at the same time.

Finally, as an object of the marriage contract, conjugal intercourse is a debt, and the payment of this debt is an act of commutative justice. Obviously this has to be explained to married people; but it seems to us that the true virtue-value of the act is not completely appreciated unless it is also pointed out that conjugal intercourse means something much more personal than the payment of other debts. It is in fact the keeping of a sacred trust. This can be done by using the popular expression "the marriage vows," which, though technically inexact (because a vow is a promise to God), has a connotation of sacredness that is entirely consonant with the true nature of matrimonial consent, and adds the warmth of a personal, religious commitment to the otherwise somewhat cold notion of justice.

(2) Granted their appreciation of the positive natural and supernatural values of intercourse, married people should be encouraged to use these values as explicit motives for intercourse. We would not assert that such explicit motivation is necessary for an act of virtue or for supernatural merit. We prefer the opinion that a minimum of implicit motivation is sufficient for this. But no theologian would propose this minimum as the ideal. The ideal certainly is that Christian spouses use the marriage act as a means to their greater sanctification. This does not mean that they must eschew physical pleasure as a motive. That would be unrealistic and not in keeping with the divine plan. But in the true scale of values personal pleasure is subordinated to higher values; and Christian asceticism recommends these further purposes as the dominant motives. Since conjugal intercourse is, as we have seen, especially rich in these

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purposes, married people have a wide sphere of choice if they wish to use physical intimacy as a means to their greater sanctification. Thus at times they might have intercourse for the explicit purpose of having children; at other times from the motive of self-giving charity: to foster and express their natural and supernatural love of each other, and their love of God, too; on other occasions the dominant motive might be love of chastity and the desire to protect it; and, finally, the motive, especially when satisfying the request made by the other, might be mainly justice.

The foregoing are but suggestions of dominant, explicit motives of virtue. We do not mean that these things should be planned in a mechanical way. Such planning could dull the spontaneity of conjugal intimacy. Nor do we mean that, on the occasion of each expression of physical intimacy, there should be one dominant virtue-motive. We merely wish to point out how diverse the motives might be, even when they are limited to the virtue-values inherent in conjugal intercourse. Actually, frequent reflection on these values will keep them all in the minds of the spouses; and thus their physical intimacy will have the virtuous flavor of all the God-given purposes. The dominance of one or the other motive would depend on personal inclination and choice; the main thing is the persevering desire to use sexual intercourse in such a way that their love will grow more and more like the love of Christ for His Church.

(3) After all that we have said about the natural and supernatural values of conjugal intercourse, it may seem strange to say that Christian spouses should be encouraged to practice some self-denial in their use of the marriage act. Nevertheless the same Christian tradition that recognizes the values of the marriage act also recommends occasional abstinence from it. It is true that the suggestion of absti-

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nence has sometimes stemmed from an erroneous theological view that conjugal intercourse is in some way tainted; but it is also true that the same Apostle who taught the supernatural beauty of intercourse recommended that Christian spouses, by mutual consent, should sometimes abstain from intercourse to give themselves to prayer.⁹

Why recommend abstinence from such a holy thing? The reasons are practical rather than purely theoretical. It is a plain fact, that, without some self-denial, any strong pleasure tends to be too absorbing. If this is true of the pleasure of eating and drinking, it is all the more true of the satisfaction of the sexual urge. Moreover, some voluntary abstinence from intercourse seems necessary because in normal married life there are many occasions when abstinence is mandatory. There are, for instance, the times of illness and the periods immediately preceding and following childbirth. Those who have not learned to practice voluntary self-denial in their use of the marriage act may readily be overwhelmed in these periods of necessary abstinence and thus be led to serious sins.

On the positive side there is much to recommend occasional abstinence. First of all, as St. Paul indicated, there is the matter of drawing closer to God through prayer. And there is the further incentive that through occasional abstinence spouses can the better show themselves that their mutual love is truly spiritual, that it is not too much dependent on bodily contact, that it is more than anything else a union of souls. In fact this motive of cultivating a deeper spiritual affection ought always to be prominent in abstinence from intercourse, whether voluntary or necessary.

Abstinence from sexual relations based on such motives is a meritorious practice which can be recommended gen-

⁹ 1 Cor., 7, 5.

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erally to couples who are seeking holiness in their sexual relationships and are mutually agreed on this means of fostering it. But the abstinence we speak of is, of course, temporary. St. Paul's words are:

Defraud not one another, except, perhaps, by consent, for a time, that you may give yourselves to prayer; and return together again lest Satan tempt you for your incontinency.¹⁰

The practice of perfect continence in marriage can be recommended pastorally only in quite exceptional cases. The state of celibacy has been constantly extolled by the Church as a higher way of life than that of marriage. This is Catholic teaching. And there have been saintly married couples who have agreed or have even bound themselves by vow to observe perfect continence in the married state. But in ordinary pastoral practice the two states of life should not be considered compatible. If a couple wishes to practice perfect continence in marriage and asks advice about it, the following points, in our opinion, should be kept in mind in order to avoid the dangers envisioned by St. Paul. (1) Make sure that neither one is imposing his or her wishes on a reluctant partner. The agreement should be completely voluntary on both sides. (2) Make sure of the spiritual quality of their motivation, and keep an eye out for incorrect theological or unhealthy psychological attitudes. (3) The agreement, at least in the beginning and for a lengthy period of trial, should be revocable at the reasonable request of either party. (4) The couple should be discouraged from making perpetual vows of continence until after they have proved by a lengthy "noviceship" that they are able to keep them, and only if they are of firm character and unusual emotional

¹⁰ *Ibid.*

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stability. (5) The younger the couple the more necessary as a rule are all these precautions.¹¹

This attitude of prudent hesitancy on the part of the spiritual director does not reflect any disparagement of celibacy, much less any lack of confidence in the wonders of sanctity that can be accomplished with the grace of God. It is simply a realistic recognition and commonsense acceptance of the fact that the obligations of perfect and perpetual continence are ordinarily and practically incompatible with the obligations of the vocation to marriage. Those who have been called by God to the state of marriage and thereafter come to believe that He is calling them to the practice of perfect continence have certain presumptions to overcome. They have as it were the burden of the proof. The unusual and favored souls who surmount these obstacles may, with the help of God's special grace, (and a skilled spiritual guide) reach heights of sanctity.

Sex will ever remain, even within marriage, a mystery, and given our fallen nature, something of a stumbling block. It exemplifies in an acute form the more general problem of the Christian's tension between the virtuous use of bodily pleasures and the hedonistic surrender to them. It is the dilemma of Christian self-renunciation in this life versus Christian self-realization in this life. The simple ascetical directives outlined above by no means solve this dilemma. But they can help sincere married lovers to walk the rather narrow path of holiness that separates un-Christian hedonism on one side from a Manichaean repudiation of God's bodily creation on the other.

¹¹ We have spoken of persons already married, perhaps for a long time. As for contracting marriage with a previous agreement to practice perfect chastity, or with a condition to that effect, it is unnecessary to say how completely extraordinary would be the circumstances which might justify such a procedure. Cf. Ford, *The Validity of Virginal Marriage* (Worcester: Harrigan Press, 1938), p. 132, note 46.

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THERE IS A flood of literature about sex technique in marriage which is available everywhere but which is often open to grave criticisms from the viewpoint of Christian morality. From this literature, and from other even more objectionable sources, many of the general public have now been introduced to practices, some of which are sinfully hedonistic, and others inordinately hedonistic in the sense that they put an exaggerated value on, and encourage an excessive indulgence in sexual pleasure. As a result the consciences of many Catholics are confused, and more and more frequently married penitents ask their confessors about the morality of this or that practice. Confessors need to know what these practices are, what is their morality, and how to deal with them in confession, when it is necessary to do so, briefly, effectively and delicately.

On May 16, 1943 the Holy Office issued a private Instruction entitled: Some Norms on the Conduct of Con-

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fessors in Dealing with the Sixth Commandment.¹ After recalling the sanctity and dignity of the sacrament of penance, the Instruction calls attention to canon 888 § 2 (which warns confessors against engaging anyone in curious and useless questions), and then reviews the duty of asking such prudent questions as are necessary to help the penitent make a good, integral confession. The Instruction goes on:

The confessor needs no less prudence and gravity when in the fulfillment of his function as physician and teacher he comes to the task of warning and instructing penitents. Let him first of all be deeply conscious of the fact that it is the healing, not of bodies but of souls, which is entrusted to him. Consequently it is usually not his business to advise penitents in regard to medicine and hygiene, and he must entirely avoid whatever would cause astonishment and scandal. . . .

He should, however, give his penitents moral instruction and appropriate direction according to the doctrine of approved authors, and should do this prudently, decently, and moderately, without going beyond the real needs of the penitent. . . .

In order that confessors may be able the more readily and securely to perform this office, they must in good time be instructed and trained in it by their teachers, and not in the principles merely but also by trial and practice, so that they will know exactly how penitents should be questioned about the sixth commandment, whether they be children, young people or adults, especially women; what questions are necessary or useful, and which ones on the contrary are to be omitted; and what words are to be used in the language of the country.

No doubt there is a certain incongruity involved in the discussion by professional celibates of the intimate side of

¹T. L. Bouscaren, S.J., *Canon Law Digest*, III, pp. 379-383 (canon 888); *Periodica*, 33 (1944), 130.

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married life. Not, however, if we leave aside the field of physiology and of sex techniques and restrict ourselves to those moral principles and moral applications which it is essential for a confessor to know in order to meet the needs of souls. Cardinal Marchetti-Selvaggiani, the then Secretary of the Holy Office, in the covering letter he sent to Ordinaries along with the above Instruction observed that "human infirmity and malice being what they are, the necessity of dealing in confession with all kinds of sexual sins is not rare." He therefore insisted on the need of timely and solid instruction of candidates for the priesthood:

For the better they have been instructed in these matters, the more easily will they understand the pitiable condition of these souls, and will take care of them without any hesitation, nor will they have any need of numerous, bothersome questions to obtain the sins from the penitents, but will be able to deal quickly with this precarious material and be done with it.

We feel therefore that we will be meeting a real need, and fulfilling the letter and the spirit of the Instruction of May 16, 1943, if we now take up some special problems in this area. We shall give first, a very brief résumé of the fundamental notions and fundamental principles on which solutions are based, second, some specific applications of these principles, especially to problems on which Rome has spoken, and third, some pastoral advice for handling these cases in the confessional.

FUNDAMENTAL NOTIONS AND PRINCIPLES

Theologians speak of the "marriage act," "true marriage act," "natural copula," "perfect copula," "natural intercourse," "coitus," and "act per se apt for generation." As a

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general rule these expressions all mean the same thing. For a true marriage act it is required and sufficient that the man at least partially penetrate the vagina and seminate partially in the vagina.² The man's distinctive part in the marriage act, therefore, is to seminate—a function for which orgasm is required. Woman's distinctive part, on the other hand, is to receive the semen. When she does this, the conjugal act is essentially complete, even though she has no orgasm. She is entitled to orgasm, and it is highly desirable that she experience it; but her orgasm is not an essential part of the marriage act.

Except for this analysis of the essentials of intercourse, the theologians' distinction between complete venereal acts, or pleasure, and incomplete venereal acts, or pleasure, is centered about orgasm. A complete venereal act means orgasm, whether in man or woman, whether in married or single persons. And complete venereal pleasure is the pleasure that normally accompanies orgasm. By incomplete venereal acts theologians understand the process of tumescence up to the point of orgasm, but not including it. By incomplete venereal pleasure they understand the mixed feelings of pleasure and tension which normally accompany tumescence.

The marriage act is in itself entirely legitimate; further-

² Hartmann Batzill, O.S.B., *Decisiones S. Sedis de Usu et Abusu Matrimonii* (Rome: Marietti, 1943), pp. 44, 45 gives the following text of a response of the Holy Office, dated Feb. 27, 1941: "Utrum ad copulam perfectam et ad matrimonii consummationem requiratur et sufficiat, ut vir aliquo saltem modo, etsi imperfecte, vaginam penetret, atque immediate in ea seminationem saltem partialem naturali modo peraget; an tanta vaginae penetratio requiratur ut glans tota intra vaginam versetur? Resp. Affirmative ad primam partem. Negative ad secundam." The accurate determination of the meaning of *copula perfecta* is important not only for solving the moral problems of marital intimacy, but also for determining canonical problems concerning the impediment of impotence and the consummation of marriage.

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more it is meritorious for eternal life provided the usual conditions required for merit are fulfilled. We should avoid therefore a false way of thinking or speaking about the marriage act, as if a sort of indecency attached to it, as if it were unbecoming that mankind should be propagated by such an act, and almost unbecoming of God to have instituted this means for the propagation of mankind.

Deliberate, directly intended orgasm, (i.e., complete venereal activity or pleasure), is not permitted either to husband or to wife except in the marriage act, or in immediate conjunction with the marriage act, so that, morally speaking, it is part of the marriage act. Violation of this norm by either husband or wife is always objectively a serious sin. This is the common teaching of theologians, which is now confirmed by the teaching of Pius XII:

By reason of this law of nature, the right and power to the complete, directly intended exercise of the sexual faculty [i.e. orgasm] does not belong to man except when he performs the marriage act according to the norm imposed and defined by nature itself. . . .

What has been said up to this point concerning the intrinsic evil of any complete use of the generative faculty outside the natural marriage act is valid in the same way for married people and for single people, whether the complete use of the genital apparatus is exercised by the man or the woman, or by both parties together; whether it is done by means of manual touches or by the interruption of the marriage act; for this is always an act contrary to nature and intrinsically evil.³

Mutual incomplete acts which are preparatory to the nat-

³ Allocution to the Second World Congress on Fertility and Sterility, 19 May 1956, AAS, 48 (1956), 467-74 at 473. The allocution was in French, but the passage from which the above excerpt is taken was delivered in Latin. See *The Pope Speaks*, 3 (Autumn, 1956), p. 196, 197.

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ural marriage act, are *per se* permitted to married people to whatever extent they are necessary or useful in order to achieve satisfactory intercourse.

Mutual incomplete acts which are not immediately preparatory to intercourse but take place at other times are not *per se* illicit; they too are virtuous and meritorious when used in moderation.

At the very least it can be said, according to solid theological authority, that incomplete mutual acts of married persons, whether in immediate preparation for intercourse or at other times, are never gravely sinful as violations of chastity unless they involve a serious and unjustifiable risk of orgasm outside the marriage act.⁴

AMPLEXUS RESERVATUS

On June 30, 1952 the Holy Office issued the following statement concerning the practice of *amplexus reservatus*:

Admonition

The Holy See has noted with grave concern that in recent times not a few writers when treating of conjugal life have not been ashamed to go into the details concerning it frequently, openly and minutely: furthermore, that some of them describe, praise and recommend a certain act called *amplexus reservatus*.

Lest it fail its duty in a matter of such great moment, which concerns the sanctity of marriage and the salvation of souls, the Supreme Sacred Congregation of the Holy Office, at the express command of His Holiness by Divine Providence Pope Pius XII, seriously admonishes all the aforesaid writers to desist from such a way of acting. And it earnestly exhorts the Bishops to exercise careful vigilance in these matters and to make diligent use of appropriate remedies.

⁴ For an explanation of what is meant by unjustifiable risk of orgasm, see above, Chapter 10, p. 196 f.

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Priests, moreover, in their care of souls and in the direction of consciences, must never, either of their own accord or when questioned, presume to speak as though no objection were to be made against the *amplexus reservatus* from the viewpoint of the Christian law.⁵

We have already touched sufficiently on the question of hedonistic sexual literature and will here confine our remarks to the problem of *amplexus reservatus*.

Amplexus reservatus means intercourse in which penetration takes place and is continued for some time, perhaps a few minutes, perhaps for a long time, but neither party experiences orgasm before, during or after the act. The hypothesis is that the parties intend from the beginning that the act will take place in this way.

It is to be distinguished: from *coitus interruptus*, in which the man withdraws before the completion of the act and finishes it outside; from so-called "Karezza," in which the woman experiences orgasm but the man has no orgasm either before, during or after the act; and from those ex-

⁵ AAS, 44 (Aug. 1952), 546. About three years later (April 21, 1955) the Holy Office used strikingly similar language in another connection. In a private letter addressed to certain Ordinaries, after condemning in forthright and unequivocal terms the use of contraceptive diaphragms as intrinsically evil, the letter spoke of the husband who "cooperates materially only" with a wife using such a device. The letter says that "Ordinaries shall not permit the faithful to be told or taught that no serious objection may be made according to the principles of Christian law" to such material cooperation. As in the case of the *Monitum* on *amplexus reservatus*, the language used here amounts to a strong warning to confessors against the unqualified exculpation of material cooperation on the part of the husband, but avoids any explicit declaration that it is always and in all circumstances immoral. See, "Notes on Moral Theology," *Theological Studies*, 13 (1952) 79-80 (Kelly); 15 (1954), 96-97 (Ford-Kelly); 23 (1962), 259-61 (Lynch); A. Boschi, "Sull'uso del matrimonio," *Perfice Munus*, 36 (Mar.-Apr. 1961), 154-59; id., "Brevi note sul decreto [?] del S. Ufficio circa la 'Cooperatio viri in casu pessarii occlusivi ex parte uxoris,'" *ibid.*, (Oct., 1961), 555-61.

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ceptional cases in which the man experiences orgasm without any ejaculation or at least without any external ejaculation.⁶ In all of these latter three cases orgasm takes place without any true marriage act, and accordingly these practices are objectively grave sins. *Amplexus reservatus* is also to be distinguished from intercourse in which the woman has several orgasms while the man, deliberately delaying, has only one. In this case there is a true marriage act; we will discuss its morality later.

The practice of *amplexus reservatus* was known to the ancients and has been discussed by moralists for hundreds of years. But the occasion for issuing the admonition was apparently the publication and widespread dissemination by Catholics in France and Belgium of works which went into minute detail about sex techniques in marriage, and extolled the practice of *amplexus reservatus* as a legitimate means of avoiding conception, and also as a means of achieving a more perfect, more spiritual kind of conjugal love. Hedonistically protracted pleasure is also the purpose at times.

⁶ Apparently a very few males are capable of deliberately cohibiting ejaculation while experiencing orgasm. Cf. Joseph J. Farraher, S.J., "Notes on Moral Theology," *Theological Studies*, 16 (1955), 267, citing Kinsey et al., *Sexual Behavior in the Human Male* (Philadelphia: Saunders, 1948), pp. 158, 159. Besides, as a result of prostatic or other surgery, or as a result of injuries, some males experience orgasm with no external ejaculation, or an ejaculation much reduced in quantity. In these cases the ejaculation takes place internally and is said to be retrograde. It goes into the bladder. Orgasm without ejaculation, therefore, at least without external ejaculation, is a medical fact. Ejaculation without orgasm also seems to take place in some cases, in the sense that a discharge or flow of semen takes place with little or no indication of the normal phenomena of sexual tumescence and detumescence. If a man were able to achieve this latter kind of semination in the vagina, perhaps with artificial, prosthetic help, it does not seem certain to us that his act would not be a marriage act. For a medical appraisal of such a device, see Pendleton Tompkins, "Infertility Due to Faulty Intromission Successfully Treated by Prosthetic Device," *Journal of the American Medical Association*, 172 n. 1 (1960), 103-53.

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One of its proponents asserted that among the couples with whom he had discussed this matter roughly one third were unable to learn the practice, another third were unwilling even to try, and another third were capable of it and were using it to avoid the sin of birth control and to avoid conception at the same time.

Even before the issuing of the admonition, the Holy Office had taken steps in this matter with regard to the works of Paul Chanson (a Catholic layman, not to be confused with his brother, A. Chanson, a priest and well-known writer):

Already in 1950 the Archbishop of Paris had asked Catholic magazines and weeklies not to announce or in any way publicize the two books of Paul Chanson; he had also asked the Editions Familiales de France to withdraw any mention of the *Impri-matur* (cf. *L'Ami du Clergé*, Febr. 9, 1950, p. 96).

On September 30 of the same year, *La Semaine Religieuse de Paris* published the following notice: "In a letter dated August 12, 1950, the Sacred Congregation of the Holy Office informed us that the works of Paul Chanson: *L'Art d'aimer* (Paris, 1950), and *Art d'aimer et Continence Conjugale* with a postscript by Father H. -M. Féret: *Art d'aimer et vie spirituelle chrétienne* (Paris, 1950), should be withdrawn from commerce, and that no new edition or translation should be authorized because of 'the general orientation and particular advice' which these works give.

We have advised the authors of this and, at the request of the Sacred Congregation, we hereby inform the faithful of it."

M. Chanson also published other works on this topic in

[†] Jules Paquin, "L'Étreinte réservée," *Sciences Ecclésiastiques*, 5 (1953) 81-106, at p. 81, note 1.

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1950 and 1951.⁵ Then in 1952 the Holy Office issued its admonition.

Let us briefly summarize three opinions which have been held with regard to the morality of *amplexus reservatus*.

The first holds that it is licit, chaste, and generally commendable without qualification;—in other words that there are no objections to it from the viewpoint of the Christian law. The Holy Office undoubtedly considered that the works of M. Chanson defended this view. This view is condemned by the Holy Office.

The second view holds that it is not illicit in itself (i.e., by reason of its immediate object), but only by reason of its end or its circumstances. These make it, or can make it sinful, either gravely or venially. For instance, it would often involve the parties in situations where they would be running an entirely unjustifiable risk of orgasm outside the marriage act. This would be gravely sinful. Or it would often involve them in an exaggerated or exclusive concentration on sensual pleasure which would be venially sinful, or at least inordinate. We agree with this second opinion which is by far the most commonly held by theologians, past and present.

The third opinion holds that it is venially or mortally sinful in itself, i.e., by reason of its immediate object as an intentionally incomplete act of intercourse. Very few theologians hold this opinion. The only one we know of who still holds that it is intrinsically and gravely sinful is Hyacinthus M. Hering, O.P.

A confrere of his at the Angelicum University in Rome, Mario Castellano, O.P., points out what was the scope of the statement of the Holy Office:

⁵ *L'accord charnel* (Paris, 1950); *L'Étreinte réservée: témoignage des époux* (Paris, 1951).

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The second and third opinions are not touched by the *monitum*; the Holy Office intended to reprove only the first—so at least it seems to me—and to put an end to the dangerous habit of certain writers and confessors of praising and advising the use of *amplexus reservatus* as permissible and commendable.⁹

Fr. Castellano gives this merely as his personal opinion, but since he was a consultor of the Holy Office and one of its principal officials, he was in a position to have a particularly well-founded opinion on this point.

It is not our purpose to discuss here the reasons which lead us to adopt the majority view, or the reasons which we believe conclusively refute the opinion of Fr. Hering. These points have been sufficiently explored elsewhere.¹⁰

The most complete and informative exposition of the various opinions and the reasons set forth by their proponents is to be found in the article by Jules Paquin, S.J., cited above. His bibliography of moralists who have treated this topic for hundreds of years contains about eighty names. As to the argument from authorities he concludes:

The incomplete conjugal act [*amplexus reservatus*] does not involve in itself grave malice (the common and morally certain opinion), and it does not even involve [in itself] any venial malice (the common and solidly probable opinion today).¹¹

Fr. Paquin's clear exposition of this entire matter avoids

⁹ Mario Castellano, O.P., "Adnotationes ad Monitum S.S.C.S. Officii de 'amplexu reservato,'" *Ephemerides Iuris Canonici*, 8 n. 4 (1952), 341-45; cf. Ford-Kelly, "Notes on Moral Theology," 1953, *Theological Studies*, 15 (1954), 52-102 at 101, 102.

¹⁰ Cf. Gerald Kelly, S.J., "Notes on Moral Theology, '1952,'" *Theological Studies*, 14 (1953), 31-72 at 59; F. Hürth, S.J., "Inquisitio Critica in Moralitatem 'Amplexus Reservati,'" *Periodica*, 41 (1952), 251-69; Jules Paquin, art. cit., see notes 7 and 9 *supra*.

¹¹ Art. cit., p. 88.

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both the Scylla of severity and the Charybdis of laxity, illustrating vividly the practical reasons for the pastoral prescriptions of the admonition.

Fortunately this case does not appear to be presented too frequently in the confessional, at least in this country. When it is presented, either by way of accusation, or by way of consultation, the confessor should make sure first that there is really question of *amplexus reservatus*, in which neither party experiences orgasm before, during or after the act. It might easily be confused with similar practices (mentioned above) from which it is morally altogether distinct. But penitents who seriously declare they are capable of this kind of intercourse are to be believed. It is not impossible. It is a question of fact. The penitent is the only one who can testify to the fact. Once the fact is established the first duty of the confessor is to make sure that he does not "presume to speak as though no objection were to be made against *amplexus reservatus* from the viewpoint of the Christian law."

What are these objections? We have already mentioned the gravely sinful, unjustified risk of orgasm, and the venially sinful, or at least inordinate, hedonism. Furthermore, the partners might sin in this practice by neglecting their affirmative duty to procreate. Or one of them might sin against the other by forcing, or practically forcing the practice on a reluctant partner. Relations of this kind are not part of the duty imposed by the nature of the marriage contract. Finally, according to some physicians the practice is psychologically injurious to health; but other physicians deny this.

The confessor, then, should ordinarily deter penitents from this practice because of the moral dangers it involves and because his aim is to lead all his penitents, according to

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their capacity, not only to avoid sin, but to live lives of Christian self-restraint, self-discipline and mortification. Excessive sensual gratification brings on spiritual deterioration. But he should not accuse of mortal sin except where there is clear mortal sin. In a particular concrete case, probably of rare occurrence, it is possible that the practice could be legitimate in its object, end and circumstances. When this occurs the confessor cannot object to it even as venially sinful.

COPULA DIMIDIATA

Copula dimidiata means intercourse in which there is partial (e.g., one third or one half) penetration of the vagina, with semination taking place in the vagina. It is not to be confused with *copula appositiva* in which semination takes place just outside the vagina, and which, therefore, does not seem to be a marriage act. *Copula dimidiata* fulfills the minimum essential requirements for a marriage act as set forth in a reply of the Holy Office.¹²

Accordingly, theologians raise no moral objections to the practice if more complete penetration is impossible, painful or harmful. Since the act is a true marriage act and the partners are doing all that can be expected of them their conduct is clearly licit.

On the other hand, their conduct would be clearly illicit if, mistakenly believing that this practice was an effective means of preventing conception, they were to use it with contraceptive intent. They would be guilty subjectively (*affective*) of a grave sin of onanism. But their act would remain objectively a true marriage act.

The moral problems are raised in the hypothesis that al-

¹² *Supra*, note 2.

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though *copula dimidiata* does not destroy the substantial procreativity of the act, it does significantly diminish the chances of resultant conception. Since nowadays people have very little confidence in this idea, and since medical opinion would probably confirm their scepticism, we hear little or nothing of this problem in pastoral practice. Why does it call for any discussion then? Partly for historical reasons, and partly because it raises, at least speculatively, some moral questions which have not as yet been satisfactorily resolved.

On November 30, 1921, the Bishops of Holland submitted some questions to the Holy See concerning the practice of *copula dimidiata*. Their explanatory letter showed that they were especially concerned because of the scandal given by certain confessors who were spontaneously and promiscuously recommending it to penitents desirous of avoiding more children. Furthermore, the Bishops believed the practice was not only contrary to Christian morality but was in danger of leading Catholics to onanism rather than averting them from it. It was the sort of situation which we have seen repeated in recent times in the case of *amplexus reservatus*. Well-meaning and zealous confessors, in trying to find a solution for the birth control problems of their penitents, were acting imprudently and even erroneously in their indiscriminate recommendations of a questionable practice.

On Nov. 23, 1922 the Holy Office issued a reply, approved by Pius XI, which effectively put an end to these irregularities.¹³

¹³ For text of the letter of the Dutch Bishops to the Holy See, cf. *Periodica*, 12 (1923), 33-35. See also Hartmann Batzill, O.S.B., *Decisiones S. Sedis de Usu et Abusu Matrimonii* (Rome: Marietti, 1943, 2nd ed.) 36-38. For text of questions proposed and the response of the Holy Office, see T. L. Bouscaren, S.J., *Canon Law Digest*, I. p. 155 (can. 247); John

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Pastorally, today, the problem is of little account. But if the question ever arises the confessor should know that according to most theologians it is venially sinful to practice *copula dimidiata* if it *de facto* significantly reduces the probability of conception, and if the parties have no proportionate reason for making use of it. If they do have a justifying reason, it is not sinful at all. Even if they directly intend to reduce the chances of conception, this is not sinful according to some as long as they have proportionate reasons for not wanting more children.

But this leaves us with some still unsolved problems concerning the objective morality of *copula dimidiata*.

Why is it venially sinful to practice it without a justifying reason? Vermeersch says it is because it puts a positive obstacle to generation when one has the opportunity of using another, better way.¹⁴ But if it is a true marriage act how does one show that there is an obligation *sub levi* to use a better way? It has often been said that there is no general obligation to posit the marriage act in the best way possible in order to insure that it will result in conception. The choice in any event is not between a probably fruitful act and a certainly fruitful act. The choice is between a probably fruitful act and a more probably fruitful act. Even at best, any act of intercourse will only be probably fruitful. What is the source of the obligation to increase the probability of fecundity? Those who hold that there is no obligation to posit an act which is more probably fertile, and who nevertheless require a justifying cause to omit positing

J. Lynch, S.J., "Notes on Moral Theology," *Theological Studies*, 23 (June, 1962), 233-265 at 257-59, commenting on D. Squillaci, "De Sollicitatione ad Turpia," *Palestra del Clero*, 40 (Aug. 1-15, 1961), 903-7.

¹⁴ *Periodica*, 12 (1923), 36. Placing a positive obstacle in the way of generation sounds very much like contraception, and it is somewhat surprising that it is not considered gravely sinful, if it is sinful at all.

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such an act, are like those who used to hold that there was no affirmative duty to have children but required proportionate causes to justify the avoidance of children by the legitimate means of periodic continence.

Perhaps one can find the source of the obligation in the affirmative obligation to procreate. This obligation, in our opinion, normally requires of couples not merely that they posit substantially integral acts during fertile periods. It requires them in addition to take whatever ordinary means are necessary or useful in order to make their intercourse actually fruitful, thus fulfilling their duty to contribute to the conservation of the race. (The ordinary means we have in mind would not include anything that involved notable inconvenience.) Deliberately to choose a less probable means when a significantly more probable one is easily available might constitute a venially sinful neglect of ordinary means to the fulfillment of a duty.

Consider an analogous case. Suppose a husband does not want children and his wife does. Would he not sin (against her) if he insisted on a type of intercourse which while substantially integral would nevertheless significantly reduce their chances of raising a family? In fact, as a violation of justice and charity this could be gravely sinful, could it not?

As for the assertion that married couples are under no obligation to use the more probably fertile method of intercourse: this is true in the sense that they do not have to do this to avoid the sin of contraception, the sin of mutilating the marriage act; but it could still be asserted that they are obliged to use the more effective method when this is an ordinary means, necessary or useful in fulfilling their affirmative obligation to the race.

All this is purely theoretical, of course, as far as *copula dimidiata* is concerned, because it is very far from clear that

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this kind of intercourse significantly decreases the chances of conception in any case. In some cases it may actually increase them.

But perhaps at some future time analogous problems of a more practical kind may arise with regard to attempts to reduce not the degree of fertility of the generative act, but the degree of fertility of the generative faculty, male or female, or both. When that time comes we may have to scrutinize more carefully the theological opinion that it is not contraception, not gravely wrong, and not intrinsically wrong at all *ex objecto*, to put a positive obstacle to generation which merely reduces without destroying the probability of fecundity.

OTHER PRACTICES

We mentioned above a problem cognate to that of *am-plexus reservatus*, namely the question of sexual union in which the woman has two or more orgasms while the man, deliberately delaying with her consent or at her request, has only one. What is the morality of this practice and how should confessors deal with it?

The case is rarely if ever discussed in the manuals. According to one view the marriage act by the law of nature itself (which can be discovered by examining the internal structure and natural finality of the act), must consist merely in one orgasm on the part of the man, with not more than its one corresponding orgasm on the part of the woman.¹⁵ In this view an additional deliberate orgasm on the part of the woman would be mortally sinful, as being

¹⁵ F. Hürth, S.J., "Inquisitio Critica in Moralitatem 'Amplexus Reservati,'" *Periodica*, 41 (1952) 251-269 at pp. 261, 262. And compare V. Vangheluwe, "De Pollutione Feminea," *Collationes Brugenses*, 49 (1953) 281-284, who discusses a slightly different case but would probably agree with Hürth.

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an unnatural pollution procured with the husband's help. We believe that before asserting this conclusion categorically theologians should discuss the question more fully, taking into consideration the following points, and possibly some others.

(1) The relation of the woman's orgasm to the internal structure and natural finality of the marriage act is obviously quite different from that of the man's. The male orgasm is essential to a marriage act and is per se essential to procreation. Female orgasm is not essentially required for either. All are agreed today that the wife is not entitled to orgasm outside a natural marriage act. But it is quite another thing to say that each orgasm of hers during sexual union can be justified only by a corresponding orgasm on the part of her husband. We do not assert anything similar of the husband. His orgasm during sexual union requires no corresponding orgasm on the part of his wife in order to be legitimate.

Given the normal differences in the processes of male and female tumescence and detumescence, and given the essential differences that exist between the internal structure of the male and female orgasms, and the internal finality they have—in other words, given the essentially different relationships they bear to the primary end of marriage—we have yet to see any convincing arguments to prove that nature has established any absolute order which relates one female orgasm to one corresponding male orgasm in each act of sexual union. In our opinion it can be reasonably maintained that the several female orgasms which take place during one act of sexual union are all morally united with the complete act of the man during that union, and that nothing more is required to preserve the proper ordina-

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tion of these several orgasms to the marriage act in which they occur.

(2) There is a practical consideration which confirms us in this view. Suppose the man is naturally slow in arriving at his climax, with the result, not planned ahead of time, that his wife has two orgasms while he has one. When the second orgasm impends what is she to do? Ask him to withdraw without completion? Obviously not. Remain passive? Hardly. Is she not supposed to help him to finish? Can she be obliged at one and the same time to help him actively to finish and to repudiate internally the activity (and its pleasure) which she is externally obliged to produce? There seems to be a strong presumption from common sense, not easily overcome by fine-spun philosophical argumentation, that they are both acting in accordance with the moral law if at this point they deliberately cause and consent to the second orgasm. If so, the second orgasm is not intrinsically evil like an unnatural pollution. It does not constitute objectively a grave deordination in the internal structure of the marriage act. And if this is true, why is it a mortal sin to intend from the beginning to bring about this same result?

(3) Finally, we believe that there is some reason for thinking that this whole discussion is academic rather than real. We have mentioned the normal differences that exist between the processes of male and female tumescence and detumescence. The male orgasm is generally a clear-cut, easily recognizable physiological event. Apparently with women the case is different. Many women are said to have minor climaxes before arriving at the real climax which alone qualifies as a true orgasm in theological terminology. The minor climaxes are by definition incomplete acts. All would agree that during intercourse such minor climaxes

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raise no special moral problem. Furthermore, as a practical criterion of the difference between a minor climax and a true orgasm, many authors appeal to the satiating or satisfying character of true orgasm. They would not consider one of these climaxes to be a true orgasm unless it were an act which for that occasion satisfied sexual desire. Since presumably the purpose of the partners in having the man delay his orgasm is in order to satisfy his wife's sexual desire, one may doubt whether the question of a multiplicity of true orgasms would ordinarily arise. If the criterion is satisfaction, then the fact that the previous climaxes were not satisfying would indicate that they were not true orgasms. On this score, then, the problem may be more academic than real as far as "unnatural pollution" is concerned.

It is also somewhat academic, from the viewpoint of the confessor, on another score. It would rarely if ever be feasible or prudent for him to go into details with a penitent in order to determine whether in these circumstances there had been a minor climax or a true orgasm. It would also be imprudent for him to raise anxieties and doubts of conscience concerning grave guilt in a problem where the grave guilt is so questionable even if there is a multiplicity of true orgasms.

Questions about this practice are asked, however, with increasing frequency, and the confessor should be prepared to deal with them. And so, in answer to the question we originally proposed ourselves: "What is the morality of this practice, and how should confessors deal with it?" we reply briefly:

1) It has not been shown, in our opinion, to be gravely or even venially sinful as a deordination of the marriage act itself.

2) It may or may not involve hedonism, depending on

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the motives and the circumstances in the individual case. People's sexual needs vary greatly, and what might be a sign of hedonism in one couple might not be hedonistic at all in another.

3) When asked about it, confessors: (a) should not say it is forbidden under pain of mortal sin, and should guard against forming false consciences; (b) should encourage their penitents to true charity in satisfying one another's sexual needs; (c) and should teach them to aim at practicing Christian self-restraint and mortification in their marital relations.

As a practical matter, we feel it would be unrealistic nowadays to pretermitt altogether discussion of the morality of oral-genital contacts preparatory to intercourse. Practices such as these are repugnant and shocking to a great many people, and intolerable to some, but their morality cannot be decided on the basis of emotional reactions which, though normal, are apparently not universal. People differ very widely in their estimates of what is shameful or disgusting in sexual matters, these differences being the result of differing cultural backgrounds, family attitudes, sexual education, natural temperament, and other factors. But if we may borrow the language used by the Holy Office in appraising some other problems of conjugal intimacy, priests and confessors should never speak as though there were no objections to these practices from the viewpoint of the Christian law. We determine the morality of these acts by applying the principle of conjugal justice and charity, the principle of conjugal chastity, and the principle of Christian self-restraint.

Conjugal justice and charity. In the first place, the marriage contract does not impose on either partner an obligation to perform acts of this kind. They are not part of the

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matrimonial *debitum*. To demand such preparatory acts from an unwilling partner is not a reasonable request, and in our opinion to force or to urge these practices on a reluctant partner could easily be a grave sin against conjugal charity or justice or both. What follows concerning the morality of these acts is said in the supposition that both parties willingly agree to them.

Conjugal chastity. These acts would obviously be grave sins against chastity if they involved a serious and unjustifiable risk of orgasm outside intercourse. But provided this is excluded, most theologians today would say that in these acts there is certainly no grave sin against conjugal chastity; and probably no venial sin as long as the partners have a justifying reason, for instance that these acts are necessary or useful to the achievement of satisfactory sexual relations. In other words these acts are considered morally (not aesthetically) comparable to other incomplete preparatory acts as far as their essential chastity is concerned. Their "obscenity" or "nastiness" does not make them unchaste.

Then why do authors speak of a justifying reason to free them from venial guilt? Perhaps because such acts tend to undermine a sense of shame and thus lead to sexual sins; but more likely the reason underlying this teaching is that these acts seem contrary to human dignity unless excused by proportionate cause, are likely to undermine the partners' mutual respect for one another, and are evidence of exaggerated pleasure-seeking. In a word, the reason may have more to do with hedonism than with chastity.

Christian self-restraint. This brings us to the principle of Christian self-restraint, insisted on in such strong language by Pius XII in his Address to the Midwives, and to the French fathers of families.¹⁶

¹⁶ *Supra*, Chapter 10, p. 189 f.

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There has undoubtedly existed in theological literature an attitude towards acts of this kind which condemns them *a priori* as hedonistic. In the past theologians even accused them of grave guilt. It has often been taken for granted, even in modern times, that the only explanation for such behavior is either a greediness for sex pleasure (like the sort of overeating which would amount to a venial sin of gluttony), or at least a lack of self-restraint which is inordinate and un-Christian. But given the wide range of differences in human beings, in their sexual preferences, in the possible reasons for such preferences, and in their actual sexual needs, we prefer to abstain from making any universal *a priori* judgment as to sinful or inordinate hedonism. We believe that such a judgment should be based principally on the reasons the partners have for what they are doing. And in practice we believe the partners themselves are the most competent judges of these reasons, pertaining as they do to such an intimate area of their conjugal relationship.

Besides, as far as confessional practice is concerned, it is both imprudent and impractical to ferret out venial sins in these intimate matters—and this is true of all aspects of marital intimacy. It is imprudent because it involves detailed questioning about matters not necessary for the integrity of confession. The Holy Office Instruction of May 16, 1943 forbids such questioning. It is also imprudent because it is usually those who need it the least who take most to heart what is said about venial sin. Some of them develop anxious consciences for no good reason. It is impractical because we seem to have rather vague norms for distinguishing venial sins from imperfections in these questions of hedonism. Is it a venial sin of *gula*, or an imper-

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fection, or a perfectly reasonable thing to eat three pieces of pie for dessert? The only sensible answer to this question is: "It all depends!" In sexual matters it is altogether impractical, if not actually impossible, for confessors to try to draw the line between inordinate instinctual desires and truly human needs.

Therefore, when confessors are asked about the above-mentioned practices, they should explain the principle of justice and charity (to make sure neither partner is forcing repugnant practices on the other), the principle of chastity (to make sure there is no unjustifiable risk of orgasm outside intercourse), and the principle of Christian self-restraint. The confessor will accomplish much more if he avoids a tone of shocked surprise or condemnation and stays on the positive side. He can explain briefly the positive Christian values which the sex relationship should include. If he explains to his penitents, according to their capacity, the ascetical values of their sex relations, and how these relations are part of their vocation to marriage, which comes from God, and encourages them to seek these values, and be moderate in seeking sex pleasure, he will be doing all that can be expected of him in deterring them from both sinful and inordinate hedonism.

What we have said about the imprudence of trying to ferret out venial sins, or of creating anxious consciences about venial sins, applies to all the problems we have discussed in this chapter and indeed to the whole field of marital chastity. This does not mean that the confessor should be concerned only with mortal sins. On the contrary, he should be leading his penitents as high as their capacity allows. But his more practical and pressing problem is to help penitents make a good, integral confession

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when these embarrassing problems are bothering them, and to give them basic moral instruction as guidance for their future conduct.

Penitents often confess marital abuses very vaguely, because of ignorance or embarrassment. To help them make a good confession the confessor needs, firstly, to be well-acquainted ahead of time with the more common practices to which they might be referring, so that he can recognize them with a minimum of questioning; secondly, he needs a clear, dignified, non-technical vocabulary with which to speak of these matters. He will never acquire it if he has become accustomed to speak of these things in seminary jargon which is half English, half Latin. Thirdly, he needs to be forearmed with a few definite, inoffensive questions to help the penitent make himself understood.

When integrity of confession is all that is at stake, if the confessor doubts whether to ask a question or how to ask it, it is better to remain silent. He can study or consult afterwards and be ready for another occasion. It is better to omit material integrity than to risk bringing odium on the sacrament of penance. One's absolution will be valid even if the penitent has not made himself clear.

But if he has not made himself clear it is impossible to give moral instruction or advice for the future. For this it is essential to know what is happening. Therefore, when a person confesses vaguely some marital abuse, or some suspected abuse the following line of questioning, or some similar line, may be found useful.

The confessor can ask first: "Do you mean that you have been practicing birth control?" If the answer is in the negative he can ask next: "Do you think you have been guilty of serious sin?" If the penitent is unhesitating in declaring that there was serious sin, it would not be necessary ordi-

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narily to question further as to the nature of the abuse. It would suffice to know the number of times. The confessor does not need to know, for the integrity of the confession, exactly what kind of grave abuse of the marriage relation took place. Even though they may not all be of the same moral species, at least it is unwise and unnecessary for him to try to discover what happened in more detail.

But if the penitent doubts whether there was a grave sin, and seems to have a troubled conscience which is in need of instruction for the future, then a further question is in order, because unless the confessor knows what is happening he cannot give advice. He might say, for instance, "Please tell me what is it that worries you. Do not hesitate to say just what it is and I will help you. Do not be afraid, etc." This may elicit the necessary information from which he can decide whether there is question of serious sin, venial sin, or no sin; and what advice to give for the future.

If the penitent is too timid or ashamed to say exactly what happened, it would be very unwise for the confessor to suggest possibilities to him. If he will not come out with the real difficulty, probably the best the confessor can do will be to give a brief general instruction on the rights and duties of marital intimacy. This instruction should be worded carefully and thoroughly prepared and made ready. Each confessor should choose his own way of doing it. The following is an example.

"Sexual intercourse between married persons is part of the Sacrament of marriage and is blessed by God when done properly. Furthermore all the acts which lead up to natural intercourse are permitted. They are the normal and necessary preparation for it. This means that all those actions and touches and so forth that would have been wrong and immodest if you were not married, are now a part of your

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married life as long as they are a preparation for intercourse. Even if you indulge in these intimacies with your partner at times when you do not intend to have intercourse they are not sinful. They can be legitimate expressions of love as long as you have a proper regard for one another's feelings, and as long as you do not satisfy your passions outside intercourse. To feel sexually excited is not wrong. But it would be seriously wrong to go so far that you caused an orgasm in yourself or in your partner outside the marriage act. Orgasm means letting your emotions go the whole way; it means satisfying your passions. That is permitted only in intercourse itself. Now is there some particular question you would like to ask me?"

If such an instruction does not bring out the penitent's problem, the confessor can give up and leave him to God. He has done his part. It will be noted that the only actual questions suggested are these: 1) "Do you mean you are practicing birth control?" 2) "Do you think you have been guilty of serious sin?" 3) "Please tell me what it is that worries you," etc. and after a brief instruction, 4) "Is there some particular question you would like to ask me?" All these questions are couched in terms that can offend nobody. One of the principal points is to get the penitent to tell his (or her) story without making the mistake of suggesting anything to him.

Every confessor must learn for himself how to treat these difficult and delicate matters. But it is hoped that by adhering to some such scheme the confessional will not lose the sacred dignity that belongs to it, the confessor will fulfill his duty, and the penitents will receive the instruction and help which should be theirs in the sacred tribunal.

12



Christianity and Contraception

CONTRACEPTION IS A decidedly controversial issue among Christians. In our first chapter, we called attention to the fact that this controversy is of rather recent origin: until approximately the beginning of the present century all Christian bodies repudiated contraception as immoral.¹ It is time now to spell out more in detail the differing convictions of twentieth-century Christians. Before doing so, it will be well to explain briefly what we mean here by "contraception" and by "Christian."

In general, we shall use the word "contraception" in its wide sense as meaning any positive method of preventing conception. It does not include either continuous or periodic continence.

A complete enumeration of contraceptive methods then available, with an appraisal of their effectiveness and utility,

¹ Actually, even in the early decades of this century, there seems to have been very little overt approval of contraception on the part of non-Catholic church bodies. The real beginning of the general Protestant recession from the old tradition seems rather to be the Lambeth Conference of 1930.

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was given in a Planned Parenthood manual prepared by R. L. Dickenson, M.D., in 1942.² A year later Dr. Dickenson published a discussion of "Conception Control" in the *Journal of the American Medical Association*.³ At the beginning of this discussion he wrote:

There are two methods outstanding and equal in degree of protection. These are the diaphragm combined with jelly and the condom. For permanent prevention of pregnancy vasectomy and salpingectomy are increasingly utilized, the latter sometimes immediately after delivery. No single method encompasses all the variants in preference and in unusual conditions. The male may resort to the condom, withdrawal, closure of the spermatic ducts; the female to the fitted diaphragm with jelly or cream, the cervical cap, jelly or cream alone, douche, suppository, sterile or safe period, and closure of the fallopian tubes.⁴

This seems to be a complete enumeration of the methods of birth control then known, except of course continuous

² *Techniques of Conception Control*, 2nd ed. (Baltimore: Williams and Wilkins, 1942).

³ 123 (Dec. 18, 1943), 1043 ff.

⁴ *Ibid.*, p. 1043. It should be noted that among the various contraceptive techniques that he later discusses Dr. Dickenson includes *coitus reservatus*, by which he means coitus with orgasm for the woman only. This is the meaning commonly given by physicians and sexologists when they explain *coitus reservatus*. Referring to this in his theological discussion of birth-control methods, Canon Hugh C. Warner says that *coitus reservatus* "is permitted in the Roman Catholic Church." Cf. *Theology*, 57 (Jan., 1954), 13. By this statement Canon Warner unintentionally misrepresents the Catholic Church and Catholic theologians. In their discussions of this matter Catholic theologians are careful to explain that by *coitus reservatus* they mean an act of sexual union in which neither husband nor wife experiences orgasm; hence this practice is much more accurately referred to as *amplexus reservatus*. Since this practice, as they explain it, involves no orgasm, Catholic theologians would not designate it as a contraceptive measure. Nevertheless, though not in itself a contraceptive measure, it cannot be said to be simply permitted in the Catholic Church. The Holy Office has warned against unqualified approval of *amplexus reservatus*; and even those Catholic theologians who deny that the practice is intrinsically evil consider it morally dangerous. Cf. our remarks on this topic in Chapter 11, p. 213 ff.

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continence. To these must now be added the oral contraceptives so much discussed in recent years. All the methods given here, except partial or complete continence, are included under our term "contraception." And it seems hardly necessary to add here that our discussion concerns the morality of contraception within marriage. All Christian bodies repudiate coitus, whether normal or contraceptive, outside of marriage.

Among methods of conception control Dr. Dickenson includes vasectomy and salpingectomy. In his context, these operations are clearly contraceptive measures and are included under the term "contraception," as used in the present chapter. It is well to note, however, that not all sterilizing procedures should be so designated. Theologians carefully distinguish between *direct* sterilization, which is precisely designed to render conception impossible, and *indirect* sterilization, which is a therapeutic procedure that results only incidentally in rendering conception impossible. For instance, the removal of a cancerous uterus also destroys reproductive power; but the obvious purpose of this operation is to attack the pathological condition of cancer and the destruction of procreative power is merely an inevitable and unintended byproduct. We would designate such a sterilization as *indirect* and we would not include it under the notion of contraception. Only direct sterilization is included in our present chapter. In later chapters we shall deal with some problems that bring out more clearly the distinction (and in some cases the difficulty of distinguishing) between direct and indirect sterilization.

With reference to the religious groups included in this survey, the word "Christian" is also taken in the wide sense as meaning all those who profess allegiance to Christ and who claim to follow His teaching. For our purpose, three

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groups of Christians may be distinguished: (1) Catholics, (2) Eastern Dissidents, and (3) Anglicans and other non-Catholics.

By Catholics we mean all those of the East and West who are united under the spiritual sovereignty of the pope. Eastern Dissidents are those who are generally referred to as the Orthodox Churches. Our third group is most frequently classified as merely "Protestant." This seems to be an oversimplification, because the Church of England officially considers itself as Catholic, not Protestant; but the Anglicans are definitely not Catholic in the same sense as Christians who belong to our first group, or even in the same sense as the Eastern Dissidents, and, in so far as its views on contraception are concerned, the Anglican Church not only agrees with the dominant present-day Protestant view, but it is the acknowledged leader in the formulation and defense of that view.

1. *The Catholic Church and Contraception*

The most authoritative statement of the Catholic teaching is found in the encyclical *Casti Connubii*. The first part of this encyclical is positive, explaining Christian marriage in terms of its divine institution, its beauty, and its blessings. The second part is negative, analyzing and denouncing false theories and abuses. The third part is constructive, outlining the steps to be taken to preserve the beauty of Christian wedlock and to eradicate or forestall the abuses.

The first of the abuses discussed by Pius XI is frustration of the marriage act. After referring briefly to some reasons for resorting to this practice, he says:

But absolutely no reason, even the most serious, can turn something which is intrinsically against nature into something

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conformable to nature and morally good. Since, therefore, the conjugal act is designed of its very nature for the generation of children, those who, in performing it, deliberately deprive it of its natural power and capacity act against nature and commit a deed which is shameful and intrinsically immoral.

Small wonder, therefore, if Holy Writ bears witness that the Divine Majesty pursues with greatest detestation this abominable crime and at times has punished it with death, as St. Augustine notes: "Intercourse even with one's legitimate wife is unlawful and shameful when the conception of offspring is prevented. Onan, the son of Juda, did this and the Lord killed him for it."

Since, therefore, openly departing from the Christian doctrine handed down uninterruptedly from the very beginning, some have recently decided that another doctrine about this practice should be solemnly proclaimed, the Catholic Church, to whom God Himself has entrusted the teaching and defense of the integrity and purity of morals, standing in the midst of this moral ruin, in order that she may preserve the chastity of the nuptial union from this shameful stain, in token of her Divine ambassadorship, raises her voice on high through Our mouth, and promulgates anew: any use of marriage whatever, in the exercise of which the act is deprived through human industry of its natural power of procreating life, violates the law of God and of nature, and those who commit anything of this kind are marked with the stain of grave sin.⁵

After this solemn statement, Pius XI goes on to admonish confessors not to be blind leaders of the blind. He shows great sympathy for married people who are in difficult straits, but he insists again that no difficulty can ever justify contraception and exhorts those who are experiencing difficulties to trust in the grace of God, who never commands

⁵ AAS, 22 (1930), 559-60.

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the impossible. He then refers briefly to the problem of cooperation in the sin of the other, and he concludes this part of the encyclical with a reference to the licit use of periodic continence.

In October, 1951, in his Address to the Midwives, Pope Pius XII gave the following official summary of the teaching of *Casti Connubii* on contraception:

Our predecessor, Pius XI, of happy memory, in his encyclical *Casti Connubii*, December 31, 1930, solemnly proclaimed anew the fundamental law governing the marital act and conjugal relations: that any attempt on the part of married people to deprive this act of its inherent force and to impede the procreation of new life, either in the performance of the act itself or in the course of the development of its natural consequences, is immoral; and no alleged "indication" or need can convert an intrinsically immoral act into a moral and lawful one.

This precept is as valid today as it was yesterday; and it will be the same tomorrow and always, because it does not imply a precept of the human law but is the expression of a law which is natural and divine.⁶

Whether direct sterilization is to be included in Pius XI's solemn condemnation of contraception will be discussed in Chapter 15. In our present factual presentation of papal teaching, it suffices to note that both popes gave separate treatment to the question of sterilization. In fact, after discussing frustration of the marriage act in the encyclical, Pius XI gave his attention to abortion before speaking of sterilization. Moreover, the encyclical itself has no explicit treatment of the broad problem of sterilization but is solely concerned with eugenic sterilization. On this latter topic, Pius XI insisted that the state has no power to mu-

⁶ AAS, 43 (1951), 843.

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tilate an innocent man against his will; and he added that the individual cannot give the state this right because the individual's own dominion over his members and functions is limited by their natural purposes.⁷

Pius XII did consider the complete problem of contraceptive sterilization; and he did this in the immediate context of contraception, so that his case against direct sterilization is—as it should be—an *a fortiori* one: that is, since contraceptive acts are immoral, contraceptive sterilization is a *fortiori* immoral. "It would be more than a mere want of readiness in the service of life," he said,

if the attempt made by man were to concern not only an individual act but should affect the organism itself, with the intention of depriving it, by means of sterilization, of the power of procreating new life. Here, too, you have a clearly established principle in the Church's teaching which governs your behavior both internally and externally: direct sterilization—that is, sterilization which aims, either as a means or as an end at rendering procreation impossible—is a grave violation of the moral law and therefore illicit. Even public authority has no right, whatever "indication" it may use as an excuse, to permit it, and much less to prescribe it or have it done to the detriment of innocent human beings. This principle has already been enunciated in the above-mentioned encyclical of Pius XI on marriage. Therefore, ten years ago, when sterilization came to be more widely used, the Holy See found it necessary to make an explicit and public declaration that direct sterilization, whether permanent or temporary, of the man or of the woman, is illicit, and this by virtue of the natural law, from which the Church herself, as you well know, has no power to dispense.⁸

On many other occasions during his reign, Pius XII re-

⁷ AAS, 22 (1930), 565.

⁸ AAS, 43 (1951), 843-44.

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iterated his teaching about contraceptive acts and contraceptive sterilization; and, less than one month before his death he applied the principles to the new anovulatory drugs: the use of such drugs to prevent conception is direct sterilization; their use for therapeutic purposes, with incidental loss of fertility, can be squared with the principle of the double effect and thus be justified.⁹

In summary, speaking officially for the Catholic Church, Pius XI and Pius XII taught that contraception is always immoral, and that it is not objectively justifiable under any circumstances. This teaching applies not only to contraceptive acts but also to direct sterilization, whether this be merely temporary (as in the use of the anovulatory drugs) or permanent (as is generally the case with vasectomy and salpingectomy). There is no equivocation or loophole in the papal teaching. The subtleties occasionally found in theological literature are not inherent to the papal doctrine but arise rather from the difficulties of explaining certain very unusual problems and of applying the distinction between "direct" and "indirect" to some highly complicated problems of sterilization.

2. *Eastern Dissidents on Contraception*

A handbook of the Greek Orthodox Church, which makes up by far the greatest number of the Eastern Dissidents, has the following to say on the subject of "Birth Control":

Concerning birth and the control of births the Greek Orthodox Church's stand is the following, in all respects in agreement with the teaching of our Lord Jesus Christ and the heavenly Paul (I Cor. 7, 1-6).

⁹ Cf. Address to the Hematologists, 12 Sept. 1958; AAS, 50 (1958) 732-740. The anovulants are discussed on pp. 735-36.

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According to this teaching, the husband and wife ought to unite conjugally without taking any prophylactic precautions whatever. Of course, from a spiritual and moral point of view the purpose of matrimony is the perfection of the married people, but it is also to perpetuate the human race through child-birth. This perpetuation of the human race constitutes a cooperation with Divine omnipotence, i.e., though the first couple of the human race was created by God Almighty Himself, the continuation of the life of the race of man was left in the hands of man with the help and under the guidance of the Omnipotent, All-kind and Omniscient God.

But if wedded couples have sexual intercourse only as a means of satisfaction for their carnal desires, then the Sacrament of Matrimony—"this great mystery," as the Apostle Paul terms it—loses its value and its holy purpose and deteriorates into a means of sexual satisfaction. In other words, the union of partners blessed by the Church is thus changed to respectable immorality.

If a husband and wife do not desire to have any children, they ought to abstain from all conjugal relations while they are able to have children, and then to come together again in sexual union relying entirely and solely on God's omniscience.

The use of contraceptive devices for the prevention of child-birth is forbidden and condemned unreservedly by the Greek Orthodox Church.¹⁰

It is difficult to say with what authority this Handbook is published; but the implication of the Introduction is that it speaks for all Eastern Dissidents ("Orthodox" Christianity) and presents the teachings of our Lord Jesus Christ without change or addition.¹¹ We have found nothing official that contradicts the teaching given in this Handbook;

¹⁰ *Greek Orthodox Handbook*, 1958 (New York: Greek Archdiocese of North & South America), p. 46. For five years previous to the publication of this Handbook, the archdiocese published a *Year Book*.

¹¹ Cf. *ibid.*, pp. 9-11.

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and two recent and very important statements relative to the population problem make it very clear that the Greek Church's unreserved condemnation of contraception is for them a matter beyond dispute or compromise. For instance, the Mansfield Report of October, 1959, contains the following reservation:

The historic and doctrinal position of the Orthodox Church necessitates, at certain important points, a different approach to this subject from that reflected in the general course of this statement. The Orthodox member of the group, while sharing the concern of the group and contributing fully to its deliberations, drew attention to "the different teaching and practice of the Orthodox Church, which holds that parents have not the right to prevent the creative process of matrimonial intercourse; also that God entrusted to them this responsibility for child-bearing, with full confidence that His Providence would take care of material and other needs."¹²

Still more recent is the statement on Responsible Parenthood issued by the National Council of Churches of Christ in the U.S.A., February, 1961. This statement approves of contraception for "proper" motives. Reporting on the statement, *The New York Times* says:¹³

It was the first pronouncement ever made on the subject by the council, a federation of twenty-five major Protestant bodies and eight Eastern Orthodox communions. The council represents more than 39,000,000 persons. Because the Orthodox

¹² See Richard M. Fagley, *The Population Explosion and Christian Responsibility*, p. 229. As we noted in Chapter I, footnote I, the Appendix to Dr. Fagley's book contains the Mansfield Report.

¹³ Feb. 24, 1961. The news item begins on p. 1 and is continued on p. 16. The text of the statement is given on p. 16.

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communions recognize sexual abstinence as the only method of limiting their families, their delegates refrained from voting and thus dissociated themselves from the pronouncement.

In the statement itself it is said: "The Orthodox Church follows the traditional teaching which sanctions marital abstinence as the means of family planning." From this and from what we have given previously in this section it is clear that the Eastern Dissidents hold fast to what even Protestants recognize as the *traditional* Christian teaching on contraception and that they give no sign of weakening.

We have seen no explicit statement of the Eastern Dissidents regarding sterilization; but from their general and firm stand against contraception, it seems clear enough that they would not countenance any form of sterilization as a contraceptive measure. Sexual abstinence is the only form of conception control that they recognize as permissible; and it seems—though this is not quite so clear¹⁴—that by sexual abstinence they mean only continuous, not periodic, continence.

3. Anglicans and Other Non-Catholics on Contraception

In our opening chapter we referred to Resolution 15 of the Lambeth Conference of 1930. The text of this resolu-

¹⁴ Dr. Fagley, *op. cit.*, p. 163, writes: "The Brotherhood of Zoe, the vigorous lay movement for the renewal of the church in Greece, I am told, supports periodic continence as a means to family limitation. On the other hand, conversations with members of the monastic clergy indicate a much more rigorous point of view. Procreation is elevated as a major purpose of marriage, and patristic citations are adduced in opposition to any non-procreative use of conjugal relations. In keeping with these citations, complete abstinence alone is regarded as permissible as a method of family planning." A little later (p. 164) Dr. Fagley says he had heard of a meeting of Orthodox confessors in Athens in which part of the group thought that periodic continence could be justified within the framework of Orthodox doctrine.

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tion, which was adopted by a vote of 193 to 67, reads as follows:

Where there is a clearly felt moral obligation to limit or avoid parenthood, the method must be decided on Christian principles. The primary and obvious method is complete abstinence from intercourse (as far as may be necessary) in a life of discipline and self-control lived in the power of the Holy Spirit. Nevertheless in those cases where there is such a clearly-felt moral obligation to limit or avoid parenthood, and where there is a morally sound reason for avoiding complete abstinence, the Conference agrees that other methods may be used, provided that this is done in the light of the same Christian principles. The Conference records its strong condemnation of the use of any methods of conception-control from motives of selfishness, luxury, or mere convenience.¹⁵

This was the first official break in what the Anglicans themselves recognized as a very strong tradition in their Church "that the use of preventive methods is in all cases unlawful for a Christian."¹⁶ Resolution 41 of the Conference of 1908 and Resolution 68 of the Conference of 1920 both repudiated contraception. In the Committee Report of 1920, however, reference was made to a view favoring contraception, but this view was rejected by the Committee in the following words:

¹⁵ *The Lambeth Conferences (1867-1930)*, (London: S.P.C.K., 1948), p. 166. This volume contains the entire reports of the Conferences of 1920 and 1930 and selected resolutions from the previous Conferences.

¹⁶ This reference to their own recognized tradition against contraception is based upon the Report on Marriage and Sex of the Lambeth Conference of 1930. Cf. *ibid.*, p. 199. When we say that Resolution 15 is the first official break from the tradition, we mean that we have discovered no such previous statement. Dr. Fagley, *op. cit.*, p. 194, says: "As early as 1923, the same year that Marie Stopes opened her first 'birth control' clinic in England, there had been a Church of England statement favorable to the principle of contraception." He does not quote this statement or give its source.

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We recognize that the physical union of husband and wife has a sacramental value by which is expressed and strengthened the love that the one ought to have for the other. At the same time we urge the paramount importance in married life of deliberate and thoughtful self-control and we feel called upon to utter an earnest warning against the use of any unnatural means by which conception is frustrated. We are aware that many persons of undoubted sincerity, whose opinions are entitled to respect, do not share this view, considering the whole matter as chiefly a question of expediency to be determined on medical, financial and social grounds. This contention we cannot admit, as we believe that the question cannot be separated from the moral and religious issues involved.¹⁷

From this Committee's conclusion and from the fact that Resolution 68 voiced "an emphatic warning against the use of unnatural means for the avoidance of conception,"¹⁸ it is clear that in 1920 any Anglican view favoring the licit use of contraceptives was a minority opinion. But the Report also makes it clear that there was a minority opinion favoring the licit use of contraceptives in special circumstances; and it is probable that the influence of this minority is manifested in the opening clause of Resolution 68, in which the Conference declines "to lay down rules which will meet the needs of every abnormal case." Hence,

¹⁷ *The Lambeth Conferences (1867-1930)*, pp. 102-103.

¹⁸ For the full text of Resolution 68, see *ibid.*, pp. 50-51. The Resolution begins: "The Conference, while declining to lay down rules which will meet the needs of every abnormal case, regards with grave concern the spread in modern society of theories and practices hostile to the family. We utter an emphatic warning against the use of unnatural means for the avoidance of conception . . ." This is the only part of the Resolution pertinent to our present discussion. An illuminating account of the background to this Resolution and of the subsequent debates among Anglicans that took place in the 1920s is given by Robert Eugene Murray, S.J., *An Historical and Critical Study of the Lambeth Conferences' Teaching on Contraception*, manuscript copy, pp. 80-150. This is a dissertation presented at the Gregorian University, Rome, December, 1961.

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the full meaning of the Resolution seems to be that the Conference wanted to re-assert the doctrine that contraception is immoral, without at the same time insisting that the law is an absolute that admits of no exceptions. As a matter of fact, the subsequent open discussions that took place between 1920 and 1930 showed that not a few Anglican bishops thought that contraception might sometimes be justified; and this was by far the majority opinion in the Conference of 1930.

Although Resolution 15 of 1930 broke with the tradition "that the use of preventive methods is in all cases unlawful for a Christian," it still upheld sexual abstinence as the primary and obvious method of conception control, and its acceptance of contraception was limited to exceptional cases. Contraception was tolerated rather than positively approved. But by the time the next Lambeth Conference convened in 1948 the move toward positive acceptance was dominant. In a report prepared for the use of this Conference but not included in its proceedings, the majority opinion raised various objections to complete abstinence and the use of periodic continence for family limitation, taking the position that Christian teaching offers no valid objection to scientific contraception and refusing to recognize any a priori definition of the marriage act in isolation from the total relationship of the spouses as a binding norm in the matter of conception control.¹⁹

Similarly, in the Warren Report, prepared for the use of the delegates to the 1958 Lambeth Conference, it is pointed out that there is a strong opinion, both clerical and lay, in the Church of England that favors "a positive acceptance of the use of contraceptives within Christian marriage and

¹⁹ See *The Doctor's Profession*, edited by Daniel T. Jenkins (London: S.M.C. Press, Ltd., 1949), pp. 54-55.

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family life." According to this view, the use of contraceptives "enables the marriage to be enriched with consequent benefit to the family." It is further contended that this opinion "cannot be overthrown unless we are prepared to maintain that the nature of coition is given in every particular and for ever, in all its physical and metaphysical aspects, and so placed outside the realm of human decision."²⁰

This note of "positive acceptance" also pervades the briefer Report submitted at the 1958 Conference by its Committee on "The Family in Contemporary Society." As an often quoted paragraph of this Report says:

It must be emphasized once again that family planning ought to be the result of thoughtful and prayerful Christian decision. Where it is, Christian husbands and wives need feel no hesitation in offering their decision humbly to God and following it with a clear conscience. The means of family planning are in large measure matters of clinical and aesthetic choice, subject to the requirement that they be admissible to the Christian conscience. Scientific studies can rightly help, and do, in assessing the effects and usefulness of any particular means; and Christians have every right to use the gifts of science for proper ends.²¹

The teaching of this Report is reflected in Resolution 115 and in two paragraphs of the Encyclical Letter. The Resolution reads:

The Conference believes that the responsibility for deciding

²⁰ *The Family in Contemporary Society* (London: S.P.C.K., 1958), pp. 14-15. The Chairman of the Committee that prepared this report was The Reverend Canon M. A. C. Warren, M.A., D.D.; hence this study is often referred to as "The Warren Report."

²¹ *The Lambeth Conference, 1958* (London: S.P.C.K.; and Greenwich, Conn.: The Seabury Press, 1958), Part 2, p. 147.

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upon the number and frequency of children has been laid by God upon the consciences of parents everywhere: that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, is a right and important factor in Christian family life and should be the result of positive choice before God. Such responsible parenthood, built on obedience to all the duties of marriage, requires a wise stewardship of the resources and abilities of the family as well as a thoughtful consideration of the varying population needs and problems of society and the claims of future generations.²²

The first mention of family planning in the Encyclical Letter is in a paragraph on the purposes of Christian marriage.²³ Procreation, the Bishops point out, is not the only purpose of marriage. Another purpose is "the relationship of love with its sacramental expression in physical union." And, because of the interrelation of these purposes, the Bishops "believe that family planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, and secure from the corruptions of sensuality and selfishness, is a right and important factor in Christian family life."

The Encyclical's next reference to family planning is in the following well-known paragraph on the population problem:

There are many lands today where population is increasing so fast that the survival of young and old is threatened. We believe that it is the duty of the better developed countries to help such countries to become self-supporting in food supplies and health measures through technical and other aids. In such countries population control has become a necessity. Abortion and

²² *Ibid.*, Part 1, p. 57.

²³ *Ibid.*, Part 1, p. 22.

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infanticide are to be condemned, but methods of control, medically endorsed and morally acceptable, may help the people of these lands so to plan family life that children may be born without a likelihood of starvation.²⁴

Someone might observe that, in themselves, these statements contain no explicit approval of contraception. But in the general context of the 1958 Lambeth Conference, with its Committee Reports and Resolutions, it is clear that to the Anglicans contraceptive techniques that are medically endorsed are also morally acceptable and thus a legitimate object of the choice to be made by the husband and wife "in Christian conscience."

Because of its attitude on contraception, Dr. Richard Fagley considers that the Lambeth Conference of 1930 "was important as a pioneer step toward a Protestant doctrine of responsible parenthood."²⁵ And regarding the Conference of 1958, the same author writes:

The Section V report ["The Family in Contemporary Society"] and the supporting resolutions of the Conference not only constitute a major development in Anglican thought in regard to marriage and family life; they also mark a significant advance for the whole ecumenical movement, for the influence of the Lambeth conclusions will be felt for a long time. I think it is not too much to say that Lambeth 1958 may prove to be a watershed among the non-Roman churches between the comparative neglect of problems of parenthood in the past and a more responsible approach in the future.²⁶

Undoubtedly these two Lambeth Conferences marked both the real beginning and the climax of the Protestant

²⁴ *Ibid.*, Part 1, p. 23.

²⁵ Fagley, *op. cit.*, p. 195.

²⁶ *Ibid.*, p. 206.

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recession from the old tradition "that the use of preventive methods is in all cases unlawful for a Christian." In his chapter entitled "Protestantism and Parenthood," Dr. Fagley cites nineteen statements of Protestant groups, committees, and assemblies, which were made between 1930 and 1958 and which either implicitly or explicitly favor the use of contraceptive techniques when family planning is necessary. Such statements have multiplied rapidly since the 1958 Lambeth Conference. Dr. Fagley cites three that were made within a year after Lambeth. And in the Appendix to his book, as we have already noted, he gives the text of the Mansfield Report, which declares that, given a good reason for avoiding children, "there appears to be no moral distinction between the means now known and practiced, by the use whether of estimated periods of infertility, or of artificial barriers to the meeting of sperm and ovum—or, indeed, of drugs which would, if made effective and safe, inhibit or control ovulation in a calculable way."²⁷

In its section on contraception, the Mansfield Report relies heavily on the 1958 Lambeth Conference. As we have already observed, it is but one of the many Protestant statements that have been made subsequent to that Conference. Some of these statements are very strong, especially in urging that family planning is a *duty*, that parents have a right to contraceptive knowledge, that laws forbidding the dissemination of such knowledge should be abolished, that hospitals receiving public funds must permit doctors to render all services they think necessary, and that foreign aid for birth control projects should be given, especially when the foreign governments ask for such aid.

The most significant of the recent statements is that of

²⁷ *Ibid.*, p. 233.

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the National Council of Churches in the U.S.A., to which we have made previous reference. This statement is very much like the Mansfield Report, except on the subject of sterilization. The Mansfield Report explicitly approved of such temporary sterilization as might be effected, for example, by anovulatory drugs. And it seems that all those who favor contraception would approve of this type of sterilization and would very likely consider it the ideal contraceptive method. But the Mansfield Report gave no blessing to a method which would do "physical or emotional harm."²⁸ By implication this seems to rule out permanent sterilization, though the Report does not explicitly discuss this topic. The statement of the National Council of Churches explicitly faces this issue and hesitantly concludes that voluntary sterilization cannot be absolutely ruled out as a legitimate means of family planning:

Another approach to family planning is voluntary sterilization. Because medical science cannot guarantee that the procedure is reversible it presents the Christian conscience with special problems. Responsible parenthood is seen by many as a day-to-day process of decision-making which sterilization may negate. On the other hand, where reasons of health or the obligations of parenthood argue for the most effective means of family limitation, sterilization represents one sure method now available. Recognizing the dilemmas confronting Christian doctors and parents, particularly in some of the poorer societies where realistic alternatives seem to be lacking, we are constrained to point out the hazards in sterilization and to stress the possibility of its use only after the most thoughtful con-

²⁸ "It remains that the means employed be acceptable to both husband and wife in Christian conscience, and that, on the best evidence available, they do neither physical nor emotional harm." *Ibid.*, 233. The Report's approval of anovulants is also conditioned on their safety. Cf. *ibid.*

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sideration of all the factors involved. Additional study of these factors and of the moral issues entailed needs to be undertaken by Christian scholars.²⁹

In conclusion we may observe again that not only have the Anglicans and other churches included in this section abandoned their old tradition that contraception is a sin but they have swung to the other extreme of portraying it as a duty. Moreover, this duty, like celibacy in the Catholic Church, arises from a true vocation. Thus, the statement of the National Council of Churches, in explaining the various purposes of marriage, says:

Vocation, or the service of the couple in society, is another high purpose through which "the two become one." It normally includes parenthood and family life as major elements, but can assert a separate or even conflicting claim on conscience. Just as vocation may enjoin celibacy upon those to whom the gift is given (Matt. 19, 11), so the calling of the couple may in certain circumstances enjoin family limitation.³⁰

This vocation to family limitation includes the use of contraceptives and, with some reservation, of even permanent sterilization. The only methods generally rejected are abortion and infanticide. These are rejected because they involve the destruction of human life; but the rejection is not absolute. The Anglican Committee permits the direct termination of fetal life "at the dictate of strict and undeniable medical necessity." The Mansfield Report permits direct abortion when it "is necessary to save the life of the mother." The statement of the National Council of

²⁹ Cf. *The New York Times*, Feb. 24, 1961, p. 16. And see *The Lambeth Conference*, 1958, Part 2, p. 149. for a similar statement on sterilization.

³⁰ *The New York Times*, Feb. 24, 1961, p. 16.

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Churches allows for the destruction of human life when "the health or life of the mother is at stake"; and this statement also calls for further study by Christian scholars of "the ethical complexities involved in the practice of abortion related to abnormal circumstances." Of special interest, because of its apparent inconsistency, is this paragraph by the Anglican Committee:

In the strongest terms, Christians reject the practice of induced abortion, or infanticide, which involves the killing of a life already conceived (as well as a violation of the personality of the mother), save at the dictate of strict and undeniable medical necessity. The plight of families, or, indeed, of governments, trapped in hopeless poverty and over-population, may well help us understand why they think abortion more merciful than the slow starvation which looms ahead. Still, the sacredness of life is, in Christian eyes, an *absolute which should not be violated*.³¹

We do not see how abortion or infanticide, even for strict and undeniable medical necessity (supposing such necessity should ever exist), can be reconciled with the words we have italicized.

³¹ The Lambeth Conference, 1958, Part 2, p. 148.

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OUR LAST CHAPTER made it clear that today there is a profound difference between Catholic teaching and Protestant (including Anglican) opinion on the morality of contraception. The Catholic Church teaches that contraception is intrinsically and gravely immoral and that no reason whatsoever can justify it. Anglo-Protestant opinion has become more and more crystallized into the simple affirmation that, as a means of family limitation, contraception is intrinsically indifferent, and that, from the moral point of view, it is the motive, not the means, that counts.

Occasionally we find in non-Catholic writings the "hope," if not the opinion, that the Catholic Church will eventually mitigate its strong stand on the immorality of contraception. Is there any sound reason for expecting such a change? The spontaneous answer of the moral theologian is that there is no such reason: the Church is irrevocably committed to its teaching that contraception is intrinsically and gravely immoral and there can be no substantial change in that teaching.¹

¹ By denying the possibility of substantial change, we mean the doctrine

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It is one thing to make a spontaneous judgment. It is another thing to give the reasons underlying this judgment. In the present chapter, we wish to explore these reasons by considering historically and theologically: (1) whether the Church is already irrevocably committed to its teaching on contraception; (2) whether this teaching is proposed infallibly; (3) whether it is revealed doctrine; and (4) the scope of the Catholic teaching—that is, whether it includes all methods of contraception.

1. Is the Catholic Teaching Irrevocable?

In the last chapter we cited the most important and authoritative statements of Catholic teaching. These papal statements should, in themselves, be sufficient to show the irrevocability of the Church's position, especially in view of the solemnity of Pius XI's teaching and of Pius XII's explicit assertion that the law against contraception is "as valid today as it was yesterday; and it will be the same tomorrow and always." And it will be noted that both popes were speaking of a doctrine that is not new. They were speaking of a traditional Catholic position, of a moral teaching that reaches back through the centuries.

Later in this chapter we shall say something about the Catholic teaching on contraception in the early centuries. For our present purpose it is not necessary to show the existence of an ancient tradition. Even the Anglo-Protestants admit the existence of the tradition. What they deny is the binding force of the tradition—its finality, as the Lambeth Conference of 1930 expressed it. But we can show the binding force, the finality, of the tradition simply by showing

itself cannot change. This does not mean, however, that it cannot change accidentally, e.g. by more precise formulation. Cf. Sixtus Cartechini, S.J., *De valore notarum theologiarum* (Rome: Gregorian University, 1951), pp. 164-65.

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that during the last century and a half—a truly crucial period as regards marital morality—the Church has constantly and emphatically taught that contraception is a grave violation of the law of God. For, if the teaching of the Catholic Church on a point so profoundly and intimately connected with the salvation of millions of souls has been the same over such a long period of time, the inevitable conclusion must be that that teaching is true and unchangeable. Otherwise the Church which God has established to interpret the moral law and to guide souls on the way of salvation would be failing substantially in its divine mission.

Thanks to a valuable booklet entitled *Decisiones Sanctae Sedis de usu et abusu matrimonii*, by Hartmann Batzill, O.S.B.,² it is easy to show that the teaching of the Holy See throughout the nineteenth and early twentieth centuries was basically the same as the later teaching of Pius XI and Pius XII. In this booklet Fr. Batzill has collected ten replies of the Sacred Penitentiary, given between 1816 and 1916, all of which assume in one way or another that onanism is a grave sin against the law of nature. Five of these replies concern the cooperation of a wife with a husband who is practicing birth control by means of *coitus interruptus*.³ In all these cases it is clearly presumed that the husband's act is mortally sinful and it is implied that his act is "contra naturam"—in other words, gravely and intrinsically immoral. Another reply concerns the wife's cooperation with a husband who uses a condom, and the presupposition here is a *fortiori* that he is sinning mortally against nature.⁴

² Turin: Marietti, ed. 2, 1944.

³ *Op. cit.*, II (Nov. 15, 1816); III (Apr. 23, 1822); IV (Feb. 1, 1823); V (June 8, 1842, ad 1am); XVI (Apr. 3, 1916, resp. a).

⁴ *Ibid.*, XVII (June 3, 1916). See also IX, answer of Holy Office to dubium 2.

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Two other replies of the Sacred Penitentiary concern the refusal of absolution. One of these states that a wife may not be absolved if she wishes that her husband would practice *coitus interruptus* or if she will not try to dissuade him from the practice when she has good hope of success.⁵ The other reply has to do with the interesting case of a penitent, otherwise a good Catholic, who is practicing the equivalent of *coitus interruptus* with the conviction that he intends merely the *remedium concupiscentiae* and not the unnatural seminal ejaculation. We say he is practicing "the equivalent of *coitus interruptus*" because it seems, from the way the case is presented, that he is really making an unsuccessful attempt to practice *amplexus reservatus*.⁶ At any rate, the Sacred Penitentiary judges that in the concrete circumstances his actions are nothing but onanism; hence he may not be absolved unless he is resolved to give up the practice. Since the refusal of absolution can have to do only with mortal sin, it is obvious that these replies of the Sacred Penitentiary presuppose that *coitus interruptus* is a mortal sin.

The remaining replies of the Sacred Penitentiary deal with the need of questioning penitents about onanism and of the possibility of leaving some of them in good faith.⁷ As is well known, both these problems arise only when there is question of mortal sin. Hence, we have a further indication of the fact that the Sacred Penitentiary took it for granted that onanism is mortally sinful.

During the same period—1816 to 1916—the Holy Office answered several questions. Pertinent to our present investigation are these two answers: (1) both *coitus interruptus*

⁵ *Ibid.*, VI (May 27, 1847).

⁶ *Ibid.*, XIV (Nov. 13, 1901).

⁷ *Ibid.*, X (Dec. 14, 1876); XII (March 10, 1886).

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and condomistic intercourse are intrinsically immoral.⁸ (2) The proposition that "for legitimate reasons married people may practice onanism" is "scandalous, false, and against the natural law of marriage."⁹ Later, in 1922, the Holy Office sent its well-known letter to the Dutch Hierarchy.¹⁰ This reply concerns *copula dimidiata*, which is not in itself mortally sinful; but both the context of the Dutch Hierarchy's letter and the answers given by the Holy Office suppose that if *copula dimidiata* should degenerate into onanism it would be a mortal sin.

Shortly after the promulgation of *Casti Connubii*, Joseph Creusen, S.J., published three articles on conjugal onanism. In the first of these articles,¹¹ he outlines a proof that, at the time when Pius XI made his celebrated pronouncement, the condemnation of contraception as intrinsically and gravely immoral was already a part of the infallible ordinary teaching of the universal Church. Part of his proof consists in showing the constant teaching of the Holy See itself, as manifested in the private replies of the Sacred Penitentiary and the Holy Office which we have just recalled. The second part of his proof includes the constant teaching of moral theologians. To show this, he cites some eminent moralists. We consider it unnecessary to repeat this, both because the unanimity of moralists on this point has always been obvious and because the common teaching of moral theologians is sufficiently reflected in the replies

⁸ *Ibid.*, IX (Apr. 19, 1853) ad dubium 1.

⁹ *Ibid.*, VII (May 21, 1851) resp. 1°.

¹⁰ *Ibid.*, XVIII (Dec. 1, 1922). The next statement of the Holy Office regarding contraceptive practices is in its letter of April 21, 1955. (Cf. above, Chapter 11, footnote 5.) In this letter, it says: "The Sacred Congregation particularly raises its voice utterly to condemn and reject as intrinsically evil the application of pessaries (sterilet, diaphragm) by married couples in the exercise of their married rights."

¹¹ "L'onanisme conjugal,"—I. "L'enseignement du Magistère ordinaire," *Nouvelle revue théologique*, 559 (1932), 132–142.

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of the Sacred Penitentiary. It is the regular practice of this tribunal to base its replies on the teaching of "approved authors" and many of the replies explicitly refer to this.

The third part of Fr. Creusen's proof presents the teaching of the hierarchies of Belgium, Germany, France, Spain, the United States, and England. He finds that in all these countries the hierarchies taught the same proposition that Pius XI later proclaimed to the whole world as the traditional teaching of Christ's Church, namely: "Any use of marriage whatever, in the exercise of which the act is deprived through human industry of its natural power of procreating life, violates the law of God and of nature, and those who commit anything of this kind are marked with the stain of a grave sin." Especially significant, as Fr. Creusen points out, is the statement of Cardinal Bourne which was made shortly after the 1930 Lambeth Conference adjourned and several months before the promulgation of the *Casti Connubii*, and which uses almost the identical words later used by Pius XI in his solemn condemnation of contraception.¹²

From what we have written here it is evident that, even before the promulgation of *Casti Connubii*, the Church was completely committed to the doctrine that contraception is intrinsically and gravely immoral. This commitment was manifested by the consistency of the private replies of the Holy See, by the unanimous teaching of Catholic moralists, and by the public teaching of various national hierarchies. Thus, we think that Fr. Creusen was unquestionably correct when he wrote in 1932 that any future change in this teaching was impossible.¹³

This same conviction was strongly expressed even by a

¹² Cited in French by Creusen, *art. cit.*, pp. 139-40.

¹³ *Art. cit.*, p. 142.

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group of Anglican clergymen in a letter published in *The London Sunday Observer* of September 21, 1930. This letter is addressed to the Anglican Bishop of Monmouth, who was to be President of a Church Congress soon to be held at Newport, England. The opening paragraphs read as follows:

My Lord Bishop,—Whereas in the wording of the Lambeth Report a majority of the Bishops of the Anglican Communion seem to have given their countenance to methods of "Birth Control," which have been recognized hitherto everywhere among Christians as constituting grievous sin—methods which have so far been repudiated unreservedly by the Communion to which we belong, and to which the rest of the Church in the West neither gives nor ever can give its sanction—we venture respectfully to express a hope that some opportunity may be afforded members of the forthcoming Church Congress in Newport of repudiating a suggestion, which, over and beyond the immediate evil consequences, will serve only to widen the breach between ourselves and the many millions of our fellow Christians throughout the world.

The matter is pressing, because at any moment our penitents may be asking for direction, and because we as priests can only denounce such practices as mortal sins.¹⁴

Unfortunately, these devoted Anglican clergymen were only partially right in their appraisal of the Christian churches of the West. As we saw in the last chapter, since the Lambeth Conference of 1930 Anglo-Protestant thought has moved consistently away from the traditional repudiation of contraception, and since Lambeth 1958 this recession has become a landslide. Only the Church of Rome has

¹⁴ Quoted in *The Catholic World*, 132 (Oct., 1930 to March, 1931) 235–36.

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fulfilled their expectation of "the Church of the West." In the Catholic Church, there has been no change of doctrine; nor will there be; nor can there be. The repudiation of contraception is unquestionably irrevocable. As Pius XII declared in a statement whose authoritative character he himself inculcated, the repudiation is "as valid today as it was yesterday, and it will be the same tomorrow and always."¹⁵

2. Is the Catholic Teaching Proposed Infallibly?

Many theologians—perhaps even most of them—would say that, as far as Catholic teaching is concerned, irrevocability is tantamount to infallibility. As we shall explain later, it seems to us that there can be at least a slight difference. At any rate, the two notions are not formally the same; hence it should be fruitful to examine the Church's repudiation of contraception under the formal aspect of infallible teaching. The best way to do this seems to be to study the interpretations that eminent theologians have given of Pius XI's solemn condemnation of contraception.

We have found four authors who explicitly hold that the celebrated paragraph in *Casti Connubii* is an *ex cathedra* pronouncement. Thus, Felix Cappello, S.J.,¹⁶ after quoting the paragraph, says: "These very solemn words, uttered 'in signum legationis divinae,' obviously are an expression of infallible teaching authority, that is, a definition *ex cathedra*." And Arthur Vermeersch, S.J.,¹⁷ in his commentary on the encyclical, says that, though the precise form of words used by Pius XI is somewhat unusual for a papal definition, nevertheless the pope wished to put the stamp of his own

¹⁵ AAS, 43 (1951), 843. For the Pope's statement about the authoritative character of his address of 29 Oct. 1951, see AAS, 44 (1952), 275.

¹⁶ *De Matrimonio* (Rome: Marietti, ed. 7a, 1961), n. 816. Unchanged since the third edition, 1933.

¹⁷ *Periodica*, 20 (1931), 52.

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infallible teaching authority on the traditional teaching of the Church. In the seventh volume of their *Elementa theologiae moralis*,¹⁸ A. Piscetta, S.S., and A. Gennaro, S.S., express agreement with Vermeersch, "regardless of what others may say to the contrary." Finally, Francis Ter Haar, C.S.S.R.,¹⁹ writes: "In our opinion, this passage of the encyclical, contains a definition by the Roman Pontiff speaking 'ex cathedra.'" He then goes on to examine the text minutely and concludes that the pope is here using his supreme and extraordinary teaching authority and binding all Christians to accept the doctrine.

In the article to which we have referred previously, Fr. Creusen²⁰ holds that the doctrine enunciated in the encyclical is infallible, but he would apparently attribute the infallibility rather to the *magisterium ordinarium* of the Church than to an *ex cathedra* pronouncement. He does not, however, absolutely exclude the latter, and he is careful to point out that in either explanation the doctrine is taught infallibly and has the same binding effect on the faithful. Marcelino Zalba, S.J.,²¹ and Sixtus Cartechini, S.J.,²² give the same explanation as Fr. Creusen. While not decisively excluding an *ex cathedra* pronouncement, they insist that the repudiation of contraception enunciated so solemnly by Pius XI is clearly infallible doctrine *ex ordinario et universali magisterio Ecclesiae*.

The foregoing are the only authors we have found who

¹⁸ (Turin: Società Editrice Internazionale, ed. 4a, 1944), n. 215, footnote to text of encyclical.

¹⁹ *Casus conscientiae*, II. *De praecipuis hujus aetatis vitiis eorumque remediis* (Rome, Turin: Marietti, ed. 2a, 1939), n. 136.

²⁰ *Art. cit.*, p. 133.

²¹ *Theologiae moralis summa*, 3 (Madrid: Biblioteca de Autores Cristianos, 1958), n. 1518, note 70.

²² *De valore notarum theologiarum et de criteriis ad eas dignoscendas* (Rome: Gregorian University, 1951), p. 29.

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explicitly discuss the question of infallibility and clearly express an opinion that the doctrine enunciated by Pius XI is certainly infallible, either because it is an *ex cathedra* pronouncement or because it is taught infallibly by the *ordinarium magisterium Ecclesiae*. Five others raise the question without expressing an opinion. For instance, after referring to the controversy concerning the *ex cathedra* status of Pius XI's pronouncement and suggesting that the real point at issue here is whether the pope wished to use his supreme teaching authority, Francis Hürth, S.J., adds:

The question of a solemn definition by the Supreme Pontiff should be distinguished from the question whether the doctrine he promulgated must be considered *infallibly* true: in the sense, namely, that the doctrine authentically proclaimed explicitly and with the greatest solemnity by the Supreme Pontiff is a doctrine which the ordinary and universal *magisterium* of the Church has proposed from ancient times as something to be held [*tenenda*] and observed.²³

Father Hürth expresses no opinion on this second question. The reader is left to draw his own conclusion. A similarly ambiguous approach is used by Jean Villain, S.J.²⁴ In his text, Fr. Villain calls attention to the fact that encyclicals often contain doctrines that are already infallibly taught by the Church; and he admits that an encyclical could be used for making an *ex cathedra* pronouncement. In a footnote to this last remark, he cites *Casti Connubii* as the thorniest example. He expresses his opinion that this is not a clear case of an infallible definition; but he says nothing about the point to which he himself had called at-

²³ *Litterae encyclicae de matrimonio Christiano* (Rome: Gregorian University, ed. 2a, 1953), p. 85.

²⁴ *L'enseignement social de l'Église*, 1 (Paris: SPES, 1955), 49.

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tention: namely, whether the doctrine enunciated by Pius XI was already infallibly taught by the Church. G. Battista Guzzetti²⁵ favors the opinion of Villain regarding the *ex cathedra* pronouncement; he says nothing about the implied problem of infallibility *ex ordinario magisterio*.

Somewhat stronger than these three authors, but still not perfectly clear, is the position taken by Louis Bender, O.P.²⁶ He says that according to some eminent authors the encyclical contains an *ex cathedra* pronouncement. He makes no comment of his own; but, since he usually expresses his own disagreement, it seems likely that he agrees with these eminent authors. Still stronger, but lacking the scholastic precision we are now seeking, are the words of André Snoeck, S.J.²⁷ After calling attention to the fact that authors do not agree whether Pius XI made an *ex cathedra* pronouncement, Fr. Snoeck adds: "It may, nevertheless, be asserted that the common opinion in the Church judges that we are here confronted with an irrevocable condemnation of conjugal onanism."

We believe Fr. Snoeck is correct in his assertion about the common opinion; yet it would be difficult to prove this from a survey of the standard manuals of moral theology, many of which, even today, give little or no prominence to the words of Pius XI. Most of the manuals do not even discuss the problem of infallibility; nor do they give a "*nota theologica*" to their assertion that contraception is intrinsically and gravely immoral. There are exceptions to this lat-

²⁵ *La Morale Cattolica*, IV: *Matrimonio, Famiglia, Verginità* (Turin: Marietti, 1957), pp. 314-15.

²⁶ Cf. "Neomalthusianismo," in *Dizionario de Teologia Morale* (Rome: Editrice Studium, ed. 2a, 1957), p. 945.

²⁷ Cf. his article, "Fécondation inhibée et morale catholique," *Nouvelle revue théologique* 75 (1953), 690-702, at p. 700.

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ter statement, however, at least in the sense that several of the manuals give some kind of "nota theologica," with a reference to the words of Pius XI. Thus, in giving their first argument against onanism, Aertnys-Damen-Visser²⁸ say that they pass over other documents of tradition and of the magisterium of the Church and merely cite "these solemn words" of Pius XI. They then quote the celebrated words from the encyclical and italicize the words "in signum legationis divinae." Marc-Gestermann-Raus²⁹ refer to the Scriptural condemnation of Onan and to the past teaching of the Church, adding that this same teaching was recently and solemnly declared by Pius XI. Merkelbach³⁰ first states the proposition: "Onanism and any other kind of coitus that deprives the act of its natural relationship to generation, is intrinsically against nature, and therefore essentially and gravely immoral." He then characterizes this thesis as "certain by reason of the constant and formal teaching of Christian tradition and of the Church." Later, in giving his proof from the teaching of the Church, he says that Pius XI did not hesitate to declare that the proposition condemning onanism is the Christian doctrine that was taught in the beginning and has always been taught.

All three of the manuals just cited usually note it when some proposition is *de fide definita*. It seems clear, therefore, that the authors are studiously avoiding this kind of statement regarding *Casti Connubii*. But it is not clear that they wish to exclude infallibility by reason of the *magisterium ordinarium*. And we might say the same of the spe-

²⁸ *Theologia moralis*, 2 (Turin: Marietti, ed. 17a, 1958), n. 894.

²⁹ *Institutiones morales Alphonsianae*, 2 (Lyons: Emmanuel Vitte, ed. 20a, 1946), n. 2115.

³⁰ *Summa theologiae moralis*, 3 (Brussels: Desclée de Brouwer, ed. 9a, 1954), n. 955.

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cialized discussions by Jules Paquin, S.J.;³¹ G. Payen, S.J.;³² and by Lanza-Palazzini.³³ Fr. Paquin begins with the general statement that contraception is condemned by natural law and by the constant tradition of the Church, the interpreter of the law of God. Discussing the Church's teaching more in particular, he says that it is based on Sacred Scripture and consistently enunciated by early Christian writers, theologians, great preachers, the catechisms, decisions of the Holy See, and finally the authoritative teaching of Pius XI and Pius XII. Fr. Payen says that the encyclical shows in the clearest possible way that onanism is against the law of nature, condemned in Sacred Scripture, and contrary to the teaching of the Church. Lanza-Palazzini, although maintaining that the Scriptural argument drawn from the text about Onan is of dubious validity, say that the Catholic tradition—which includes the Fathers, the theologians, and the *ordinarium magisterium* of the Church—makes it absolutely certain that onanism is intrinsically and gravely immoral.

Perhaps the most enigmatic of all the theological appraisals of *Casti Connubii* is that given by Joseph Fuchs, S.J., who writes:

There were some who considered this solemn declaration an *ex cathedra* definition (Vermeersch, Capello); but this is not clear. Others see here a truth infallibly proposed, inasmuch as it is authentically stated that there is question of a *doctrina in Ecclesia semper tradita*. But this interpretation is not convincing either. Let us say rather: we have here such a solemn

³¹ *Morale et médecine* (Montréal: Comité des Hôpitaux du Québec, ed. 3a, 1960), pp. 294–97.

³² *De Matrimonio*, 2 (Zi-ka-wei: T'ou-sè-wè, ed. 2a, 1936), n. 2099, note.

³³ *Theologia moralis—Appendix: De castitate et luxuria* (Turin, Rome: Marietti, 1953), pp. 112–13.

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authentic declaration, renewing previous decisions, and thereafter confirmed again and again, that one who is unwilling to admit it sins against the virtue of faith, although he does not lose the faith.³⁴

One might reasonably ask whether Fr. Fuchs merely wishes to assert that the Church's repudiation of contraception is not clearly "*de fide credenda*" or whether he wishes to deny it all infallibility, even as a truth "*de fide tenenda*." To be certain about his meaning one would have to know whether he accepts or rejects the theological note, "*de fide ecclesiastica*."³⁵ At any rate, those authors who give that note could say just what Fr. Fuchs says, namely, that one who refuses to accept the Church's teaching sins against the faith but is not a heretic.

Our survey of authors has not been merely a counting of heads. We wanted to see what, if anything, eminent moralists have to say about the "*nota theologica*" for the proposition that contraception is intrinsically and gravely immoral. Many of these authors clearly and unhesitatingly say that this proposition is already infallibly taught by the Church. And even those who avoid saying that it is taught infallibly use a form of words which makes it clear that

³⁴ *De castitate et ordine sexuali* (Rome: Gregorian University, ed. 2a, 1960), p. 66.

³⁵ "*De fide ecclesiastica: veritas non formaliter revelata, quae per magisterium ecclesiasticum infallibiliter proponitur. Contraria: error in fide ecclesiastica. (N.B. Qui fidem ecclesiasticam non admittunt, alii aliter talem veritatem notant.)*" Thus Michael Nicolau, S.J., and Joachim Salaverri, S.J., in *Sacrae Theologiae Summa—I. Theologia Fundamental* (Madrid: Biblioteca de Autores Cristianos, 1952), p. 7. Later in this same volume (nn. 898-902), Fr. Salaverri discusses the note, *de fide ecclesiastica*, and lists those who use it and those who do not. Whatever expression they use, all the authors seem agreed that the infallibility of the Church extends beyond formally revealed truth and includes truths not revealed in themselves but connected with revelation. See Fr. Salaverri's explanation of "*credenda*" and "*tenenda*," *ibid.*, nn. 909-910.

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they think the doctrine is substantially unchangeable. A dogmatic note which might fairly represent a common denominator of all the authors studied, therefore, might be "at least definable doctrine." This prescind from the technical note of infallibility, and at the same time it sufficiently safeguards the irrevocability of the doctrine. Thus, it illustrates the opinion we expressed in the first part of this chapter: that a doctrine may be certainly irrevocable without necessarily being clearly describable as infallibly taught. For instance, when a doctrine is evidently definable and on the point of being defined no one would describe it as "*doctrina reformabilis*," or as possibly erroneous up to the very moment of the definition. In other words, a doctrine not yet infallibly defined or clearly proposed as infallible may be so much a part of the Church's teaching that it does exclude all possibility of error. That it has not yet been infallibly proposed may be owing to extrinsic factors, for instance, to the fact that there was no need to define what nobody denied. Or there might simply be a case in which the doctrine is actually being infallibly taught *ex iugi magisterio* but we have no apodictical way of knowing this because the question has never been put to the test. When the *vota* of the bishops of the world on the doctrine of the Assumption were gathered before its solemn definition, it was discovered, they say, that the doctrine was already *de fide ex iugi magisterio*. A similar survey of the teaching of the universal Church about contraception might reveal that this doctrine too is already being infallibly proposed *ex iugi magisterio*. We are convinced that the survey would show this and that it would have done so even before *Casti Connubii*, as was indicated by the sampling of episcopal statements published by Fr. Creusen. Hence, our own opinion would coincide with that of Frs.

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Creusen, Cartechini, and Zalba: namely, that in condemning contraception as intrinsically and gravely immoral, Pius XI was clearly and solemnly declaring a truth already infallibly taught by the universal Church. However, since a general survey has not yet been made and since we believe that the main point is to insist on the substantial immutability of the Catholic doctrine on contraception, we are content with saying that this teaching is “at least definable doctrine.”

3. Is This Revealed Doctrine?

To ask whether and in what sense the immorality of contraception may be said to be revealed is to put an apparently simple question which admits of no simple answer. But the question should be asked, not only because of its importance for a complete and ultimate statement of the Catholic teaching on contraception, but also because it opens up some serious problems that call for solution by Scriptural exegetes and experts in fundamental theology. We are not competent to solve these problems, but we can indicate what they are by considering the various possible answers to the question proposed in our sub-heading.

The first possible answer is that the immorality of contraception is explicitly revealed in the story of Onan's death. This would be the case, at least for the most ancient form of contraception, if it were clear that Onan was slain either solely or principally for his violation of chastity. In preparing this chapter, we spent a considerable amount of time in reading and in verbal consultation with Scripture scholars. The conclusion we reached after much study and repeated consultations was that, despite the fact that Pius XI refers to the slaying of Onan in *Casti Connubii* and that most moralists give it as their Scriptural argument against

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contraception, the matter is still not perfectly clear. Among both Catholic and non-Catholic exegetes good arguments can be found for the assertion that Onan was slain for his sin against chastity; and this would mean that at least the immorality of *coitus interruptus* is explicitly revealed; and from this we might draw the conclusion that the immorality of other forms of contraception is implicitly revealed. But there are competent exegetes who prefer the interpretation that Onan was slain for his refusal to raise up posterity to his brother. It seems, therefore, that the interpretation that God killed Onan solely or primarily for his sexual sin is not so clearly established that one can assert that there is certainly a divine revelation on this point.

Another possible answer is that the immorality of contraception is *implicitly* revealed in certain Scriptural passages such as, for example, St. Paul's condemnation of homosexuality and other unnatural sex practices. We have not seen discussed whether or not such passages might have a bearing on the question of contraception. But might not St. Paul's repudiation of one or several unnatural sex practices be taken to include implicitly a condemnation of other unnatural sex practices that are not mentioned explicitly? If such an interpretation is correct, then the immorality of at least some forms of contraception (*coitus interruptus* and condomistic intercourse) would be implicitly revealed.

A third possibility is that the entire natural law is *implicitly* contained in the revelation of the two great commandments and of the Decalogue. When we consider that explanations of the various commandments have consistently included within the scope of each commandment many distinct acts of virtue and many vices not explicitly mentioned in the commandment, this possibility seems to merit further consideration by theologians. One apparent

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objection that might be raised against it is the fact that popes, in explaining the Church's right to teach the moral law, have often clearly distinguished between the natural law and revealed moral precepts. For instance, there is the following statement of Pius XII in his radio message on the education of a Christian conscience:

But where can both the educator and the one to be educated find the Christian moral law with ease and certitude? In the law of the Creator, engraved in the heart of every man, and in revelation, that is, in all the truths and precepts that the divine Master taught. Both of these—the natural law written in the heart and the truths and precepts of supernatural revelation—Jesus, our Redeemer, gave to His Church as the moral treasure of humanity in order that she might preach them to all creatures, explain them, and hand them on intact and safeguarded from all contamination and error from one generation to another.³⁶

At first sight, quotations like this seem to make a clear distinction between the natural moral law and revealed precepts so that they are completely separate. But this interpretation is obviously misleading because surely every pope who has distinguished between natural law and revealed law was conscious of the fact that some of the natural law (e.g., the Decalogue) is explicitly revealed. It seems to us, therefore, that the real purpose of such assertions is to vindicate the Church's power to teach and to apply the natural law, whether it be revealed or not. Thus, such papal statements leave open the question whether the natural law is also contained in revelation, at least implicitly.

Another possible answer is that the immorality of contraception is either *explicitly* or *implicitly* contained in tra-

³⁶ AAS, 44 (1952), 272.

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dition in the strict sense, that is, in tradition as a source of divine revelation. We specify tradition in the strict sense, because certainly all Catholics admit that the Church has traditionally taught that contraception is immoral and, as we have previously pointed out, even Anglicans and Protestants admit the existence of such traditional teaching. But to say that the Church has traditionally taught a doctrine is not the same as to say that the doctrine has been traditionally taught as revealed truth. To prove the existence of a tradition in this strict sense is very difficult. Perhaps that is why some authors who hold that the Church infallibly teaches the immorality of contraception make it a point to say that this is taught as a "*veritas tenenda*," but not necessarily as a "*veritas credenda*."

In all the possibilities mentioned thus far, we were suggesting that the immorality of contraception might be formally revealed, either explicitly or implicitly. It would, in other words, be a part of what theologians call the primary object of infallibility. But even if all these possibilities were rejected, there would still remain the consideration of whether the entire natural law (and this would include the immorality of contraception) is not a secondary object of infallibility because it is intimately connected with revelation. The idea here is that, since supernatural salvation is certainly a part of the *depositum fidei*, all the requirements for the attainment of salvation are intimately connected with the *depositum fidei*, even though not in themselves revealed. It seems to us that at least in this minimum sense, the natural law must be considered an object of infallibility and that this, as well as the other possibilities explained in this section, should be more thoroughly discussed by the specialists in fundamental theology. It is our conviction that, whatever be the explanation, there can be no reason-

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able doubt that the Church can infallibly interpret the entire natural law. And this seems to mean that in some sense at least the entire natural law must be contained in or pertain to divine revelation.

Our conclusion is that the teaching of the Church on contraception is either revealed, or pertains to revelation in such a way that it can be infallibly defined by the Church. We would hope for further elucidation of both these alternatives from competent scholars, or from the Church itself.

4. The Scope of the Catholic Teaching

For several reasons it seems unquestionable that, in solemnly condemning the frustration of the marriage act, Pius XI meant to condemn any method of contraception, with the possible exception of direct sterilization.³⁷ First, we have the authentic interpretation given by Pius XII that his predecessor "solemnly proclaimed anew the fundamental law governing the marital act and conjugal relations: that any attempt on the part of married people to deprive this act of its inherent force and to impede the procreation of new life, either in the performance of the act itself or in the course of the development of its natural consequences, is immoral." Secondly, there is the fact that the manuals of moral theology published within a decade or so prior to *Casti Connubii* and commonly used in the seminaries spoke of all forms of contraceptive techniques when they described the modern methods of onanism. The pope would naturally have in mind these standard theological explanations of how the marriage act might be frustrated. Finally, it is obvious that his solemn pronouncement was directed against the Lambeth Conference of 1930; and the approval

³⁷ Our reasons for hesitating to include direct sterilization in the solemn condemnation are given below in Chapter 15.

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of contraception given by that Conference included all contraceptive techniques that were medically acceptable.

There is no difficulty, therefore, about the intention of Pius XI: he wanted to condemn all contraceptive methods, except perhaps direct sterilization. But he also wanted to reassert an "uninterrupted Christian tradition"; consequently, in explaining the Catholic position we are necessarily faced with the somewhat intriguing question: in what sense does Christian tradition condemn modern contraceptive techniques? It seems to us that the answer to the question is found in distinguishing between the techniques and the principle violated by their use. We can hardly expect to find a detailed discussion of contraceptive methods in ancient or medieval or even fairly modern theological literature.³⁸ Even the replies given by the Holy See during the century before *Casti Connubii* were limited to such things as *coitus interruptus*, sodomy, and the use of a con-

³⁸ This does not mean that various contraceptives—and fairly effective ones, too—were not known in early times. Cf. Norman E. Himes, *Medical History of Contraception* (Baltimore: William Wood, 1936). And see Roland H. Bainton, *What Christianity Says About Sex, Love, and Marriage* (New York: Association Press, 1959), p. 39: "Incidentally it may be remarked that the ancients were acquainted with contraceptive techniques. As early as 100 B.C. an inscription reveals a distinction between an abortive drug called *Phthoreion* and a contraceptive called *Atokeion*. In addition the Greeks and notably Soranus, writing in the second century A.D., showed an acquaintance with methods apart from drugs, all of them to be applied to the female, namely medicated pessaries, vaginal plugs, and astringent solutions." Dr. Bainton then adds significantly: "No Christian group to my knowledge prior to the late nineteenth century considered the propriety of the use of any of these methods." Obviously, therefore, it was not the discovery of contraceptives, nor even their improved effectiveness, that brought about the change in Anglo-Protestant thought on contraception. It was, as we noted in our first chapter and shall consider more completely in Chapter 14, a change of attitude on moral laws in general and on sexuality in particular. One gets the impression, too—and this is not said by way of criticism; it is normally to be expected when changes in moral evaluation take place—that contraception was accepted first, and then the new concept of sexuality (especially as regards the purposes of marriage and the marriage act) was developed as a moral justification for the *de facto* acceptance of contraception.

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dom. But in these replies, and in the obiter dicta found in the writings of the Fathers and the theologians through the centuries, one can note that, whether they spoke of the “venena sterilitatis,” or of the interruption of coitus, or of attempts on the part of the wife to expel the semen, there is one common denominator: all the practices are repudiated as being against nature. The only reasonable explanation of this consistency is that from time immemorial the Church held and applied the natural-law principle that forms the basis for the teaching of Pius XI and Pius XII, namely, that the inherent procreative purpose, the procreative design of the conjugal act must always be respected: hence, it is never licit to perform the act and try to frustrate that purpose or mutilate that design.³⁹

SUMMARY OF CONCLUSIONS

The discussions presented in this chapter may be briefly summarized as follows:

1) The Church is so completely committed to the doctrine that contraception is intrinsically and gravely immoral that no substantial change in this teaching is possible. It is irrevocable.

2) It is not easy at present to assign a technical dogmatic note to the doctrine. But it is safe to say that it is “at least definable doctrine,” and it is very likely already taught infallibly *ex iugi magisterio*.

3) Since the doctrine is at least definable, it must be included in some way within the object of infallibility. At the minimum, therefore, it is a part of the secondary object of infallibility and may be proposed as a truth which is absolutely *tenenda*. And there are good, though not yet con-

³⁹ Cf. *infra*, Chapter 14.

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vincing, reasons for holding that this doctrine is a part of the *depositum fidei* and can thus be infallibly taught as *credenda*.

4) The basis for recent papal condemnations of contraception is the natural-law principle that the inherent procreative purpose, or procreative design, of the conjugal act must always be respected. This principle has always been a part of the Christian teaching on conjugal morality; hence, in this sense at least, the condemnation of even modern contraceptive techniques may be called traditional doctrine.

Why the Church Rejects Contraception

FROM THE TWO preceding chapters it is clear that the Church teaches solemnly and irrevocably that contraception is intrinsically immoral. The Catholic, therefore, must internally accept this doctrine as true and must externally conform to it, even to the extent of heroism—as is actually the case in many difficult marital circumstances. And for Catholic living this internal conviction and external conformity is enough; it is not necessary to know why the Church teaches that contraception is intrinsically immoral.

For the theologian, however, it is important to try to probe more deeply into the Church's teaching and to try to understand and to help others to understand why the Church rejects contraception as intrinsically immoral. That is the purpose of the present chapter. To accomplish this purpose we shall first assemble, then analyze, pertinent texts from the teaching of Pius XI and Pius XII. In the third part of the chapter, we shall present some of the more typical and thoughtful non-Catholic discussions of contraception

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because this helps to a better understanding of the Catholic teaching. This juxtaposition of arguments against and for contraception leads logically to some concluding reflections on the relative strength of the traditional position.

Despite our inclusion of non-Catholic arguments for contraception, this chapter is not apologetic. We are not primarily interested in debating with non-Catholics. Our objective is rather to put the principal natural-law arguments against contraception in proper perspective so that those who uphold the traditional teaching can appreciate what has already been accomplished and can recognize the challenge of what is—in our opinion—a still unfinished task.

1. *The Papal Texts*

At the beginning of the encyclical *Casti Connubii*, Pius XI insists, as did his predecessor Leo XIII, on the divine institution of marriage. Then, considering the role of human beings who contract marriage, he says:

Although matrimony is of its very nature of divine institution, the human will, too, enters into it and performs a most noble part. For each individual marriage, inasmuch as it is a conjugal union of a particular man and woman, arises only from the free consent of each of the spouses; and this free act of the will, by which each party hands over and accepts those rights proper to the state of marriage, is so necessary to constitute marriage that it cannot be supplied by any human power. This freedom, however, regards only the fact whether the contracting parties really wish to enter upon matrimony or to marry this particular person; but the nature of matrimony is entirely independent of the free will of man, so that if one has once contracted matrimony he is thereby subject to its divinely made laws and its essential properties. . . .

Therefore, the sacred partnership of true marriage is consti-

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tuted both by the will of God and the will of man; from God come the very institution of marriage, the ends for which it was instituted, the laws that govern it, the blessings that flow from it; while from men, with the grace and help of God, and through the generous surrender of their persons to one another for the whole of life, comes each particular marriage, with the duties and blessings annexed to it by divine institution.¹

After this introduction on the divine institution of marriage and on the part played by the human will, the encyclical goes on to explain the blessings of marriage; then, in the second general section, it deplures false theories and widespread abuses. It is in this section that we find the solemn condemnation of contraception quoted in Chapter 12. It will be sufficient here to requote one short paragraph:

But absolutely no reason, even the most serious, can turn something which is intrinsically against nature into something conformable to nature and morally good. Since, therefore, the conjugal act is designed of its very nature for the generation of children, those who, in performing it, deliberately deprive it of its natural power and capacity act against nature and commit a deed which is shameful and intrinsically immoral.²

Also in this second part of the encyclical, after rejecting contraception as immoral, the pope briefly considers the use of marriage during periods of sterility. His words here also have a bearing on the reason for condemning contraception:

Nor are those considered as acting against nature who in the married state use their right in the proper manner although on account of natural reasons either of time or of certain defects, new life cannot be brought forth. For both in matrimony it-

¹ AAS, 22 (1930), 541-43.

² *Ibid.*, p. 559.

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self and in the use of the conjugal right there are secondary ends, such as mutual help, the fostering of mutual love, and the quieting of concupiscence, which the spouses are by no means forbidden to intend, provided always the intrinsic nature of that act is preserved, and accordingly its proper relation to the primary end.³

One other brief quotation from the encyclical is pertinent to our present theme. As we have said previously, Pius XI did not deal with the complete problem of direct sterilization. However, in asserting that even voluntary eugenic sterilization is immoral, he enunciated the principle that "private individuals have no other power over the members of their bodies than that which pertains to their natural ends,"⁴ and this principle has to be kept in mind for our subsequent analysis.

Our first selection from the statements of Pius XII is the Introduction to his Address to the Midwives. Although only certain parts of this Introduction are required for theological analysis, we think it best to quote it entirely because the tone helps to an understanding of the theological content:

Watchful guardians over that dark and silent cradle where God infuses an immortal soul into the germ the parents have provided, ready to tend the mother, ready to assure a safe and happy birth to the child she bears within her—what a noble, what a glorious task is yours!

When one thinks of the marvelous cooperation between parents, nature, and God, which brings to the light a new human being made to the Creator's image and likeness, it is impossible not to appreciate the valuable contribution you make to this work. "Into this womb you came," said the heroic

³ *Ibid.*, p. 561.

⁴ *Ibid.*, p. 565.

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mother of the Machabees to her children, "I know not how. Not I quickened, not I the breath of God gave you, nor fashioned the bodies of you one by one. Man's birth, and the origin of all things, he devised who is the whole world's Maker."

And therefore those who assist at this cradle of the beginning of human life, who in one way or another exert their activity upon it, must be acquainted with the order that the Creator requires to be maintained in it and with the laws that govern it. For these laws are not merely physical and biological, which even irrational beings and blind forces necessarily obey, but laws whose fulfillment and effects are entrusted to the voluntary and free cooperation of human beings.

The order to be observed here has been established by God's sovereign intelligence and is directed to His creative purpose; it concerns the external activity of human beings and the internal adherence of their free will; it determines what they are bound to do and what it is their duty to avoid. Nature puts at man's disposal the whole chain of causes which will result in the appearance of a new human life. It is for man to release this vital force and it is for nature to develop its course and bring it to completion. When once man has done his part and set in motion the marvelous process which will produce a new life, it is his bounden duty to let it take its course. He must not arrest the work of nature or impede its natural development.

Nature's part and man's part are thus clearly determined. Your professional training and experience enable you to know the action of nature and the action of man, as well as the principles and laws to which they are both subject; your conscience, enlightened by reason and faith and guided by divinely established authority, teaches you within what limits an action is permissible and when it is strictly forbidden.

In the light of these principles We propose now to set before you some considerations regarding the apostolate which your profession entails. For every profession that is in accordance with God's will implies a mission—the mission of carrying into

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effect the thoughts and purposes of the Creator within the sphere proper to that profession, and of helping human beings to understand the justice and holiness of the divine plan and the benefits which they themselves derive from its fulfillment.⁵

Two years previous to his discourse to the Midwives, Pius XII had spoken to Catholic doctors about the immorality of artificial insemination, even between husband and wife, when this involves a substitute for intercourse and not merely some medical assistance to make the intercourse fruitful.⁶ He refers to this again in the fourth part of the Address to the Midwives:

To reduce the cohabitation of married persons and the conjugal act to a mere organic function for the transmission of the germ of life would be to convert the domestic hearth, sanctuary of the family, into nothing more than a biological laboratory. Hence, in our address of September 29, 1949, to the international congress of Catholic doctors, We formally excluded artificial insemination from marriage. The conjugal act in its natural structure is a personal action, a simultaneous and immediate cooperation of the spouses which, by the very nature of the agents and the character of the act expresses that mutual self-donation which, in the words of Holy Scripture, effects the union "in one flesh."

This is much more than the mere union of two life-germs, which can be brought about also artificially, that is, without the natural action of the spouses. The conjugal act, as it is planned

⁵ AAS, 43 (1951), 835-36.

⁶ Cf. AAS, 41 (1949), 559-61. A complete translation of this papal statement is given in Chapter 27, "Artificial Insemination," of *Medico-Moral Problems* (St. Louis: Catholic Hospital Association, 1958), by Gerald Kelly, S.J. This chapter also gives the arguments against the various forms of artificial insemination, as well as references to the papal statements up to and including 1957. In his Address to Hematologists, 12 Sept. 1958, Pius XII again pointed out the Catholic teaching on the immorality of artificial insemination; cf. AAS, 50 (1958), 733.

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and willed by nature, is a personal cooperation, the right to which the parties have mutually conferred on each other in contracting marriage.⁷

In his address to the Second World Congress on Fertility and Sterility, May 19, 1956, after reasserting the primacy of parenthood over the more personal goals of the partners and rejecting once more a conception of marriage which makes it the servant of selfish, sensual satisfactions, Pius XII added:

But the Church has likewise rejected the opposite attitude which would pretend to separate, in generation, the biological activity from the personal relation of the married couple. The child is the fruit of the conjugal union when that union finds full expression by bringing into play the organic functions, the associated sensible emotions, and the spiritual and disinterested love which animates it. It is within the unity of this human activity that the biological prerequisites of generation should take place. Never is it permitted to separate these various aspects to the point of excluding positively either the procreative scope or the conjugal embrace. The relationship which unites the father and the mother to their child finds its root in the organic fact and still more in the deliberate conduct of the spouses who surrender themselves to each other and whose voluntary self-donation blossoms forth and finds its true fulfillment in the being which they bring into the world. Furthermore, only this consecration of self, generous in its origin, arduous in its realization, can guarantee, through the conscious acceptance of the responsibilities which it involves, that the task of educating the children will be pursued with all the care and courage and patience which it demands.⁸

⁷ AAS, 43 (1951), 850.

⁸ AAS, 48 (1956), 470. Translation taken in part from *The Pope Speaks*, 3 (1956), 193-94.

2. *Analysis of Papal Texts*

Before analyzing these texts it is well to recall what has been said previously about the supernatural character of marriage and the marriage act. Marriage itself is a sacrament; and the conjugal act is intended by God as a specific way of realizing the supernatural values of marriage. These supernatural elements are presupposed here, but they are not emphasized because our particular interest now is what the popes have said about the natural law and the marriage act. Just as it is Catholic doctrine that in general the supernatural does not destroy or mutilate the natural but perfects it, so, in regard to marriage and the marriage act, the Church teaches that what belongs to the natural order is kept intact but raised to a new status and permeated with a new dignity. Supernatural aspects are obviously not excluded from the papal texts we have cited; but the natural is stressed because it is the natural values of marriage that are fundamentally attacked by contraception.

The principle stressed in all the papal texts is the principle of "divine institution," "divinely established order," "divinely established design." In other words: God has written a certain definite plan into the nature of the generative process, and human beings are not free to change it. The Introduction to *Casti Connubii* enunciates this principle with reference to marriage itself: that is, the contract and the state of marriage are constituted by God; man is free to marry or not to marry, to marry this person or that person, but if he chooses to marry he must take marriage as God instituted it. Any substantial change in this divinely established pattern means that the union willed by the human partners is simply not marriage but some other kind of union. The Introduction to the Address to the Midwives applies the same principle to the marriage act. Married

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people are free to perform it or not to perform it; but if they perform it they must adhere to the divine pattern.

In speaking of "the marvellous cooperation between parents, nature, and God, which brings to the light a new human being made to the creator's image and likeness," Pius XII is making use of a distinction that many theologians find helpful in explaining the divine plan for human reproduction: the distinction between God's part (*opus Dei*), nature's part (*opus naturae*), and the parents' part (*opus hominum*).

God's part (*opus Dei*)—that is, God's special part, because God obviously is the author of the entire plan—consists in creating the spiritual and immortal soul. Here lies the secret of the dignity of man. Here lies the difference between man and the other animals. Here is the reason why the mating of human beings is essentially different from the mating of brutes. And here is the reason for the Church's constant inflexible defence of the values that pertain to the beginning, the continuation, and the ending of human life. Since the soul, the distinctive element of man, comes directly from God, human life in all its phases is directly dependent on God and thus removed from the direct dominion of man.⁹

Nature's part (*opus naturae*) considered adequately includes the complete endowment of man and woman with the spiritual, emotional, and biological characteristics of their respective sexes. It includes, therefore, their power to love and to respond to sexual attraction; their possession of distinctive reproductive organs; and their ability to have coitus. More particularly, when theologians explain this aspect of the divine plan for human reproduction, they stress

⁹ This statement prescind from special cases involving necessary self-defence of individuals against unjust aggression, or of the state against enemies in war time, and against criminals.

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those things that are more closely related to the biological requisites for conception and childbirth: first, the antecedents to fertilization (production of sperm and ova), secondly, fertilization itself (the union of sperm and ovum), and thirdly, the processes that follow upon fertilization (transmission of the fertilized ovum to the uterus, gestation, and childbirth). When applying the principle of divine design to this aspect of human reproduction, Pius XII emphasizes the point that man is not authorized directly to interfere with any of these biological processes: e.g., by direct sterilization, by intentionally impeding the meeting of sperm and ovum after coitus, or (and this would pertain to the further questions of abortion and infanticide), by directly preventing the development of the human embryo. As regards sterilization, Pius XI, though speaking explicitly only of eugenic sterilization, had already enunciated the general principle of divine design when he said that man's (direct) power over his natural faculties and functions is limited by their natural purposes.

The parents' part (*opus hominum*) consists in coitus. According to both popes, this act must conform to a divinely established pattern, and all the other papal statements we have cited are concerned in some way with this. In fact one cannot exaggerate the importance attached to the physical integrity of the act itself both in papal documents and in Catholic theology generally. In the solemn condemnation of *Casti Connubii* and in the paragraphs immediately preceding and following it, Pius XI refers at least five times to the act itself. He insists that contraception deprives the marriage act, designed of its very nature for procreation, of its natural power and capacity to procreate. This inherent primary purpose, generation, is here stressed because contraception, by definition, is precisely contrary to it.

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But, as we have often stated, generation does not exhaust the nature and purposes of the conjugal act. Pius XI declared, immediately after making the above statement, that when the natural character of the act is preserved it also serves the essential personal purposes of mutual help, love, and the control of the sexual instinct.¹⁰ When Pius XII condemned artificial insemination between husband and wife he singled out as the basis of his condemnation one of these inherent purposes, or values—namely that the conjugal act is essentially a mutual personal act of self-donation and love which effects the “union in one flesh.”

This value is even more strongly and beautifully emphasized in the 1956 address to the Congress on Fertility and Sterility. In this address we draw attention to these further points: that moral judgments of the conjugal act should be based upon a comprehensive view of the entire human activity involved, with all its essential human and personal characteristics; and that the loving self-donation of the partners in the marriage act is the first guarantee of the proper rearing of the child who is the fruit of that act.

In addition, it seems to us that the passages cited clearly imply that the marriage act has the character of divine design, natural and inviolable, not only as procreative, but also as fulfilling the secondary ends of marriage, especially that of conjugal love. For Pius XII seems to be saying that just as it is wrong to violate the natural design by excluding the basic procreativity of the act from the conjugal embrace

¹⁰ M. Zalba, S.J., in his excellent *Theologiae Moralis Summa*, III (Madrid: Biblioteca de Autores Cristianos, 1958), n. 1518, quotes the privately published work of an eminent theologian who says that the conjugal act “ex natura sua totus quantus et exclusive ordinatur in novam vitam procreandam.” Statements like this are unfortunate. They give the impression that the sole purpose of coitus is generation, whereas the papal doctrine, accepted, of course, by the authors quoted, explicitly enunciates other essential purposes,

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(by contraception), so also it is wrong to violate the natural design by excluding the conjugal embrace, that is, the personal self-donation of the partners, from the procreative activity (by artificial insemination). Artificial insemination is condemned precisely because it separates procreation from the personal act of loving self-surrender. In other words, the marriage act has a natural design as an act of conjugal love, too.

This leads us to still another conclusion, not explicit in the papal statements, but derived from them: that contraception itself is wrong, not merely because it violates the marriage act as procreative, but also because it violates it as an act of loving, conjugal self-donation. The act has a natural design as expressing conjugal love. Contraception violates this design too. It falsifies married love. This aspect of the immorality of contraception is now receiving increasing attention from theologians.¹¹

To sum up briefly only the points that are essential to understanding the papal rejection of contraception as intrinsically immoral: the popes use a premise which they derive from a direct analysis of nature and not by long argumentation: that the conjugal act must conform to a certain divine plan, a plan which is discoverable in the basic structure and personal character of the act. According to this plan it is an act of procreative love; and every act should have an inherent relation to procreation, at least in the sense

¹¹ For a development of the argument that contraception is immoral because it falsifies married love, see Paul M. Quay, S.J., *Contraception and Marital Love* (Washington, D.C.: Family Life Bureau, N.C.W.C., 1962), revised from an article, "Contraception and Conjugal Love," *Theological Studies*, 22 (1961), 18-40; Joseph S. Duhamel, S.J., "The Catholic Church and Birth Control," in *In the Eyes of Others* (New York: Macmillan, 1962), pp. 107-128; also as pamphlet, *The Catholic Church and Birth Control* (New York: Paulist Press, 1963); Stanislas de Lestapis, S.J., *Family Planning and Modern Problems* (New York: Herder and Herder, 1961), Chapters 10, 11 and p. 176.

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that the basic procreativity of the *opus hominum* be respected and preserved. But since it is an act of procreative love, we make the further inference that every act should be inherently expressive of the kind of love which is distinctive of marriage—a love that expresses the total giving of each person to the other and the total dedication of both as a unity in the service of life. Hence contraception is intrinsically immoral for two reasons: it deprives the act of its basic procreativity and it falsifies married love. A contraceptive act may express what the parties themselves call love, but this is not the love that is supposed to be expressed in the conjugal act. And a non-contraceptive act may fail to result in actual procreation; but this is not a fault or defect of the *opus hominum*; consequently the choosing of such an act does not constitute a violation of God's design.

What the popes insist on above all is that the physical structure of the act is inviolable. It is beyond man's dominion. Man may not mutilate it because it is not his to dispose of. The act itself is in some sense sacrosanct. This it is which, according to Catholic teaching, "is placed outside the realm of human decision."

3. Some Non-Catholic Theological Views on Contraception

The argument that the sex act is divinely planned and therefore inviolable was not and is not unknown to Anglican bishops and theologians. In the 1920s, when the Anglican Bishop Charles Gore was heading the opposition to the spread of the birth control movement in England, he insisted just as strongly as any pope that the natural character of the sex act must be preserved. And he urged, as many Catholic theologians have done, that if men are allowed to modify the natural character of the act, then the door is

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open to the philosophy of homosexuality. He stressed these arguments in his testimony before a committee preparing a report on "The Ethics of Birth Control." When this report was published it contained a statement that would imply that under some circumstances the prevention of conception by mechanical or chemical means is permissible to Christian men and women. Four of the members of the committee objected to this part of the report, giving as their reasons:

We believe that the use of contraceptives is a frustration of God's design in nature and of the primary end of the marital act and, as such, is unjustifiable. For that which seems to us to be a rule of divine law cannot, we think, be modified by man's needs and motives.¹²

These committee members also objected that the recognition of any licit use of contraception opened the door on principle to the most degrading forms of sensual indulgence.

Such were the arguments with which the Anglican defenders of the traditional view on contraception attempted to block the inroads of the birth control movement. The same arguments are used today by what is apparently a strong minority group among Anglicans. For instance, *The Family in Contemporary Society*,¹³ a volume prepared for the use of the bishops attending the 1958 Lambeth Conference, devotes 26 pages to the theology of contraception

¹² Quoted by Robert Murray, S.J., *An Historical and Critical Study of the Lambeth Conferences' Teaching on Contraception*, manuscript copy, p. 137. What we say about the Anglican theology of the 1920s is all taken from Fr. Murray's manuscript. Cf. *supra*, Chapter 12, footnote 18.

¹³ Cf. *The Family in Contemporary Society* (London: S.P.C.K., 1958). The theological discussion of contraception is distributed as follows: Introductory survey and summary, pp. 129-31; "Example 1," pp. 131-37; "Example 2," pp. 137-49, which includes an appendix on Karl Barth (pp. 147-49); "Example 3," pp. 149-54.

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in the form of three approaches to the problem. These approaches are entitled respectively, "Example 1," "Example 2," and "Example 3." It is not said whether each is the work of a single theologian or whether they represent group efforts; for the sake of convenience, however, we shall simply refer to "the author" when examining these treatments.

The author of "Example 1" objects to the theory that contraception is a positive good; and in doing this he develops two arguments that reflect the stand taken by Bishop Gore and his associates and that are in accord with the teaching of the popes. He first explains the view that, just as marriage itself is "given" and must be accepted as it is if there is to be a true marriage at all, so the marriage act has a basic biological pattern which must be accepted as it is if there is to be a true union in one flesh. He says:

It is only to the act which is "given," and not to any human counterfeit, that the metaphysical union in one flesh is attached. Here again we see the analogy with marriage. In order that the union in one flesh may be initiated, man and woman must submit themselves to the divine ordinance concerning the gift of self: if some other form of consent is substituted, their union may possibly be valid in a purely legal sense, but there can be no assurance that it is metaphysically valid. Similarly, in order that the same union in one flesh may be consummated, man and woman must submit themselves to the specific act as "given"; if some modification is substituted, there can be no assurance that anything is achieved in the metaphysical realm.¹⁴

Besides this direct and intrinsic argument against contraception, this author also makes a strong case of the indirect

¹⁴ *Ibid.*, p. 134.

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argument, which is found in both the logical and practical consequences of abandoning the traditional position that coitus must follow a given pattern:

As a rule those who approve of coitus with contraceptives condemn *coitus interruptus*. But once the notion of "givenness" is jettisoned, it becomes difficult to find adequate grounds for this condemnation. It is indeed maintained that *coitus interruptus* is bad for health, while coitus during contraception is not; but although ill consequences may suggest that the act they follow is contrary to human nature, they are not by themselves sufficient to settle the question. Perhaps the main ground of distinction that is alleged is that *coitus interruptus* lacks "relational" value. But so does coitus during contraception, if we include under "relational" the consummation of metaphysical union. If on the other hand only the spatio-temporal is to be considered, more careful research would be needed before a worth-while conclusion could be come to. "Relational" value seems to attach itself to the oddest sexual activities. It is well known that many people cannot find any satisfaction at all in the normal act of coitus, but find it in variations that most would condemn. On what grounds are we to say that these are not pioneers in the development of the sexual life?¹⁵

The author concludes that it would be very unwise in the present state of the discussion for the Anglican Church to endorse in any way the position that contraception is a positive good, which needs no special excusing circumstances to justify it. He then goes on to consider the question whether contraception may at times be chosen as a relative good in circumstances where a greater evil is to be avoided. In general, the situation he has in mind is the case in which the use of rhythm is not possible, where long abstinence

¹⁵ *Ibid.*, p. 136.

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would impose much strain on the marriage relationship, and where it is desirable for good reasons that conception be avoided. The author does not actually commit himself on this point. Rather, he simply records two opinions within the Anglican Church. Some, he says,

would argue that no circumstances can have the effect of changing a counterfeit into the genuine "given" act of coitus. On the other hand, others would say that, although circumstances cannot alter the ontological status of coitus with contraceptives, they can and do alter its moral status; that the modified act, though ontologically different from coitus during natural infertility, may on occasion be morally equivalent, being the best symbol of love and union that is eligible in the circumstances.¹⁶

From the tone of his discussion, we would judge that the first author favors the view that contraception is never justified; but he does not insist on this. And his treatment does allow for the conclusion expressed in a summary prefixed to the three discussions "that there are circumstances of such urgency as to make contraception relatively the lesser evil and morally eligible."¹⁷

This author of "Example 1," as we have seen, points to an analogy between marriage and the marriage act: each is divinely planned ("given"); hence, there is no real marriage without accepting God's plan for the contract, and there is no real marriage act, no real consummation, unless the divine plan for sexual union is followed. In giving this direct argument, the author also uses an analogy with the sacramental sign, when he says that those who advocate contraception "ignore the analogy between coitus and the sacra-

¹⁶ *Ibid.*, p. 137.

¹⁷ *Ibid.*, p. 131.

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ments. In a sacrament the promise of a supernatural gift depends on due performance of the rite according to the divine ordinance; in coitus the metaphysical union in one flesh depends on submission to the act as 'given.'"¹⁸

This latter argument seems to have won great favor among Anglicans who still oppose contraception. It was spelled out in greater detail in the minority report prepared for the 1948 Lambeth Conference and is summarized in *The Doctor's Profession*¹⁹ as follows:

The union "in one flesh" of man and wife is analogous to that union between Christ and His members which is effected by Baptism and the Eucharist; and the "specific act" of marriage is in some respects analogous to those sacraments. A sacrament is an outward visible rite to which God has attached an inward and invisible effect. If the rite is not performed with careful observance of the divine institution, there can be no assurance that the inward and invisible effect will follow at all. The question is raised whether the introduction of contraceptives into the sacramental rite of intercourse does not interfere with the divine institution and thus become impious.

Catholics might consider this sacramental analogy somewhat far-fetched. Yet, it does bring out the essential point that we have in common with this Anglican minority: namely, that the marriage act and the generative faculty have a sacred, inviolable character which sets them above and beyond man's dominion.

The author of "Example 2" definitely favors the view that contraception is a positive good in the sense that it can be responsibly used to enrich the marital relationship, and that

¹⁸ *Ibid.*, p. 134-35.

¹⁹ Edited by Daniel T. Jenkins (London: S.C.M. Press, Ltd., 1949). See pp. 54-55.

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when so used it needs no special circumstances to justify it. This conclusion is developed in eleven points which are closely reasoned in the technical terms of moral theology, making it difficult to give a fair summary. We will draw attention, however, to some of his more noteworthy ideas. He himself briefly recapitulates as follows:

Thus, whether we consider the unique and mysterious character of human coitus, its relational significance, its proper ends, its species, and its "nature" and "given" structure; or whether we consider the range of man's legitimate freedom consequent upon his paradoxical situation as a being at once involved in, and transcendent over the natural order; we reach the conclusion that there are very strong moral-theological grounds for regarding the responsible use of contraception by married persons as morally right.²⁰

The author regards human coitus as a mysterious and complex relationship that is not readily explained by traditional terms. It has a two-fold, separate purpose (which is described as a two-fold *finis operis*); on the biological level it is generative; on the personal level it is relational. By relational the author means everything that we have said about the secondary ends of marriage with reference to the marriage act and also the value of coitus with respect to the rearing of children. That these purposes are separate is evident from the fact that nature itself shows us in normal marriage two species of coitus: generative and non-generative. In other words, prescindig entirely from contraception, coitus is not always generative; in fact, most acts do not fulfill this purpose. But

the relational end of coitus is always attained, either (a) con-

²⁰ Op. cit., p. 147.

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structively, in the expression of love, the building up of the one-flesh union, and the fulfillment of the "procreative" task of parenthood . . . or (b) destructively, in the expression of lust, and in exploitation of another person, whether in or outside marriage (cf. Cor. 6, 16).²¹

In further explanation of the twofold *finis operis* of coitus, the author denies that the generative end is primary or determinative:

It has yet to be shown, however, on what grounds (other than a priori ones) generation is determinative among the ends of coitus. Such an assumption was doubtless natural and inevitable at a time when the relational significance and the intrinsic mystery of coitus were not recognized; then it was easy to regard the act principally as a generative mechanism to which, in consequence of the Fall, a certain remedial function is now annexed in marriage. But it is difficult any longer to maintain such a view, and it is at least arguable to the extent of probability that any attempt to classify the ends of coitus in order of supposed importance or priority is misconceived.²²

The author believes that traditional theology has paid too much attention to the individual acts of coitus and not enough attention to the *general pattern* of the coital acts. It is the general pattern that should be related to both the purposes (generative and relational); the individual acts cannot be so related. They can always be relational and can be kept constructively relational; but they can be generative only in a comparatively small percentage of cases.

Another term that the author thinks has been misapplied to human coitus is "natural." He thinks that this term

²¹ *Ibid.*, p. 140.

²² *Ibid.*, p. 140.

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when applied to human *coitus* should refer only to the biological and sub-human elements; and that when it is limited to this sense, then man is not only a part of it but above it and invested with the freedom to control it and redirect it. And this fact, namely,

that man in his freedom stands above nature, and is therefore at liberty to interpret sex in terms of personality and relation and to use it for the achievement of personal and relational ends, leads to the conclusion that contraception is morally right in certain circumstances. Thus man may legitimately extend the range of non-generative *coitus* as it exists in nature, by the use of contraceptive devices, but only so long as this is done in obedience to relational or social needs. In other words, contraception must always represent a responsible use of human freedom in the interests of personal relationship or of the community. The relational needs of man and woman in marriage may demand that *coitus* shall be independent of natural cycles of fertility and infertility; yet man's liberty of spirit allows him only to modify and adjust, and not to abolish the natural unities of physical sexuality.²³

The author admits, therefore, that there is some limit to man's freedom to modify the sexual act; but he does not say what this limit is. He also admits in his concluding section that there is a certain "givenness" to *coitus*, but he thinks that this element of givenness must transcend the purely biological sphere and include the entire marriage relationship as it is to be expressed in *coitus*. Moreover, he asserts that any attempt to determine the empirical features of the given act is doomed to failure. This refusal to attempt a concrete determination of the limits within which the divinely given pattern of *coitus* may be modified makes it

²³ *Ibid.*, p. 145.

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difficult to understand this author's conclusion. However, from the way in which he cites Karl Barth in an appendix to his discussion, it seems that the limits are rather wide. Barth begins with the assumption that everyone admits that some kind of family planning is necessary. There are, he says, four ways of accomplishing this: complete abstinence, periodic abstinence, *coitus interruptus*, and the use of contraceptive devices (sterilization is not explicitly mentioned). Barth thinks that all of these are in some sense "unnatural" and "embarrassing"; hence, there is really no objective standard for judging between them. The standard of choice must be subjective—that is, the conscientious decision of the married couple with a view to their own marriage relationship. So the Anglican author concludes:

Thus Barth does not express any special preference for or against contraception, but sees man caught in a situation where, if he would act responsibly in marriage, he cannot avoid taking a decision which will be embarrassing and "unnatural." In effect, therefore, the matter is left to the informed conscience of the individual—or rather (if the phrase may be allowed) to the common conscience of the one-flesh *henosis*; the honest and conscientious choice of husband and wife is the right choice for them at the time and in the situation when it is made. Yet considering the four alternatives as Barth defines them, it is clear that contraception is on the whole perhaps the least unsatisfactory of the different "unnatural" courses open to the married.²⁴

It will be noted that Barth sees no essential difference between *coitus interruptus* and any other method of family limitation. It cannot be said with certainty that the Anglican theologian agrees with this; nevertheless, on his

²⁴ *Ibid.*, p. 149.

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premises he could hardly reject it. Thus it seems that *coitus interruptus* would not necessarily be excluded from what that author considers to be the modified "given" pattern of *coitus*.²⁵ At any rate, his insistence that the biological pattern of *coitus* may be modified leaves him open to the indirect objection so forcefully presented by the author of the first discussion. This very point is noted in the introductory summary of the three papers:

A weakness of this treatment, some will think, is that it does not provide a firm basis for making a moral distinction between *coitus* modified by contraception alone and other sexual actions for which a certain relational value may be claimed, but which are generally condemned by Christian moralists.²⁶

A similar weakness of this treatment (or perhaps the same weakness under a different formality) is the author's discussion of the *finis operis* of *coitus*. There seems to be an

²⁵ The 1958 Lambeth Conference Committee on the family considers various unacceptable means of family limitation. Its report says: "The Christian conscience rightly rejects any means which interrupts or prevents the fulfillment of *coitus* and thus precludes, in husband and wife, the full completion of the sexual act." (*The Lambeth Conference 1958*, part 2, p. 148). This certainly excludes, to some extent, the use of *coitus interruptus*; but it is not clear that it is absolutely excluded because nothing else in this section, even abortion and sterilization, is absolutely condemned. And the same difficulty about absoluteness would apply to Dr. Bailey's statement in *The Human Sum*, p. 214, that all Christians "condemn abortion and the practice of *coitus interruptus*." In *Theology*, 57 (1954), 12, Canon H. C. Warner says that insofar as *coitus interruptus* "frustrates the orgasmic end of *coitus* for the woman it is neither procreative nor unitive. In a few cases there need not be this frustration, and the unitive end is then achieved." For Canon Warner, the test for a legitimate contraceptive is that it makes possible mutual orgasm. Thus he rejects *coitus reservatus* (understood as allowing for the female orgasm) because its purpose is to prevent the man's orgasm. The condom would fail the test if it prevented the woman from reaching orgasm; otherwise its use is legitimate. Incidentally, while speaking of the condom, the Canon explicitly rejects the idea that "*emissio seminis intra vas*" is a requisite for *coitus*.

²⁶ Op. cit., p. 130.

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inherent ambiguity and inconclusiveness in his speaking of the *finis operis* of coitus (presumably purposes established by God in the nature of things) and at the same time refusing to give any minimum physical content to the term "coitus." To talk about *finis operis* there must first be an opus. What is it? It is idle to dispute about what is the *finis operis* of coitus, or whether it has a primary *finis operis*, if we have no basic definition of coitus. Without some such concrete determination sodomitic intercourse between husband and wife can be called coitus with just as much reason as can contraceptive intercourse, and all the reasoning the author uses to justify contraception is equally valid to justify any sexual deviation the partners find mutually satisfactory. Thus, under this aspect, too, the author's treatment opens up a Pandora's box.

A final observation about "Example 2" is in order. It manifests something that used to be practically unknown in Anglican thought: the influence of strictly Protestant theologians. We have already noted the approving reference to Karl Barth. The author of "Example 2" was also influenced, like many others,²⁷ by the following paragraph from Reinhold Niebuhr which is often used as a Christian justification for contraception:

In Catholic natural law all social relations, including family relations, are precisely defined. *Inter alia* it is maintained that the natural law prohibits birth control and also that it enjoins the supremacy of the husband over the wife. The prohibition of birth control assumes that the sexual function in human life

²⁷ Cf., e.g., Richard M. Fagley, *op. cit.*, pp. 219-20. In this passage, incidentally, Dr. Fagley quotes John L. Russell, S.J., who is speaking of the transcendence of the supernatural over the natural, as if he were saying the same thing as Dr. Niebuhr. There is not even a common denominator between Fr. Russell's meaning and that of Dr. Niebuhr.

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must be limited to its function in nature, that of procreation. But it is the very character of human life that all animal functions are touched by freedom and released into more complex relationships. This freedom is the basis of both creativity and sin. Freedom in relation to sex may occasion license and it may also provide for a creative relation between the sexual impulse and other more complex and refined spiritual impulses. In its teaching in regard to sex, Catholic theories of natural law might actually be more plausibly expressed in terms of the Lutheran concept of "order in creation" or *Schoepfungsordnung*. For the concept of "order in creation" limits the law to a natural fact, such as natural bisexuality for instance, and does not introduce some specious universality of reason. It is not possible to escape the natural fact that the primary purpose of bisexuality in nature is that of procreation. But it is not easy to establish a universally valid "law of reason" which will eternally set the bounds for the function of sex in the historic development of the human personality.²⁸

Besides its influence on Anglo-Protestant defences of contraception, this paragraph from Dr. Niebuhr's Gifford lectures helps to perpetuate two common misunderstandings of Catholic teaching about marriage and the natural law. First, it at least implies that we consider generation to be the sole natural purpose of coitus. Secondly, it apparently puts on the same plane the Catholic teaching on contraception and the teaching that the father is the natural head of the family. It fails to note that Catholics derive these truths from natural law in different ways. The natural law absolutely rejects contraception; it requires the headship of the father, not as an absolute, but as the normal. And we might add that the primacy of governing given the husband

²⁸ *The Nature and Destiny of Man. I. Human Nature* (New York: Charles Scribner's Sons, 1943), pp. 281-82.

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in Catholic teaching is often taken to mean that the wife is considered unequal to him. This is certainly not the teaching of the *Casti Connubii*, according to which the man is the head, the woman the heart, of the family: thus he has the primacy of governing, she has the primacy of love.²⁹

The third of the Anglican theologians' discussions ("Example 3") has the sub-head, "*A less a priori approach.*" The author begins by outlining a situation in which family planning is necessary; and his point is to show that the married couple may decide to use contraceptives to this end and then offer this decision to God for His greater glory. His method of doing this is a well-known one in moral theology. He argues that none of the objections to contraception is probative; hence, contraception is not clearly illicit. Without explicitly enunciating it, he is using the principle, "*non est imponenda obligatio (vel prohibitio) nisi certo constat.*" In all justice to this treatment, it must be said that it contains not only negations, but some interesting positive observations. For instance: in a setting of famine and malnutrition, it is better to offer to God a married life with contraception than a multiplication of children doomed to starvation; though contraception may to some extent "mar" the sexual act, there are, in actual experience, no perfect sex acts anyway—understanding "perfect" to mean completely self-giving; what is natural to man is really to strive for the perfection of creation—that is, to help make this a better world than we actually find it—and contraception can be useful in this regard. As regards the sacredness of human life, is it not showing greater respect for life by trying so to control gametes that when they become zygotes they will be the best zygotes possible? Another interesting point

²⁹ AAS, 22 (1930), 549-50.

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concerns personal holiness: some holy people eschew contraception; but others equally holy practice it; hence no conclusive argument can be drawn from the conduct of conscientious men and women. Again, though it is true that contraception may endanger self-control, it is also true that the mutual consideration required by a true marriage relationship imposes much self-control; hence, contraceptives are not a mere substitute for self-control in a Christian marriage. Finally, the author calls attention to the fact that we use scientific advances to control death (we assume that he refers to the means of preserving and prolonging life); and he suggests that by analogy it is fitting to use the help of science in controlling the beginning of life.

4. Strength of the Traditional Position

By the traditional position we mean the teaching that contraception is immoral, a teaching that was common to all Christian Churches at the beginning of this century. This position is still officially defended by the Catholic Church and the Eastern Orthodox Churches, and it has been consistently and staunchly defended by an Anglican minority. The arguments for this position are given by the popes and by the Anglican minorities represented by the author of "Example 1," in *The Family in Contemporary Society*. Typical arguments for the Anglo-Protestant majorities are given in "Example 2" and "Example 3" of the same book. The relative value of the positions can be best seen, we think, by a consideration of the causes of the Anglo-Protestant recession from the traditional view that "the use of preventive methods is in all cases unlawful for a Christian."

Stanislas de Lestapis, S.J., a sociologist who is highly re-

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spected in Protestant circles throughout the world, gives two reasons for the change in official Anglo-Protestant thought regarding the morality of contraception: the emergence of a new concept of sexuality, and a renewed emphasis on the Protestant concept of morality known as "the ethic of liberty," or the "ethic of inspiration."³⁰ We referred to both these causes in our first chapter;³¹ but it is time now to consider them somewhat more completely and with reference to their consequences on sexual morality in particular, as well as on morality in general.

Sexuality, in this new concept, has a meaning that is independent of all reference to procreation. Hence, both marriage itself and the marriage act have at least two distinct purposes, which are not interdependent and which are completely separable: parenthood and the man-woman relationship (*henosis*). It is this new concept of sexuality that has given to contraception the "positive value" so often reflected in recent Anglo-Protestant official statements, and so strongly defended by the author of "Example 2."

This new concept of sexuality lays great stress on the personalist values of marriage and the marriage act; but in its zeal to preserve these values it overstresses them and divorces them from even an inherent essential relationship to procreation. It exalts the relational significance of coitus, but refuses to define coitus itself. It usually admits that there is some "given" element to coitus, but it refuses to translate this into any empirical limits. For these various reasons, this new apologia for contraception lays itself open to all the consequences pointed out by its opponents. By refusing to define the physical marriage act or to set limits to

³⁰ Cf. Stanislas de Lestapis, S.J., *Family Planning and Modern Problems* (New York: Herder and Herder, 1961), pp. 28-30.

³¹ Cf. *supra*, pp. 13, 14.

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man's freedom to vary it, the advocates for contraception must logically admit that anal and oral intercourse can have relational value for some married people and be legitimate ways of becoming one flesh. And by divorcing sexual expression from even an inherent relationship to procreation, this new theory of sexuality seems to do away with the necessity of marriage as an essential requisite for sexual expression; and, more than that—as Bishop Gore pointed out in the early days of the controversy over contraception—it seems to allow logically for a justification of homosexual relationships. If some relationship to procreation is not a requisite for sexual expression, why must such expression be limited to the heterosexual?

The traditional concept of sexuality, inherent in the arguments against contraception, does not lead to these destructive conclusions. This traditional concept includes a theology of the purposes of marriage which, as we have explained it in the first part of this book, makes due provision for the personalist values as essential to marriage while at the same time preserving their relationship to procreation. And the traditional teaching that the marriage act has a "given" structure which is substantially inviolable³² safe-

³² In *The Family in Contemporary Society*, p. 15, it is contended that justification of contraception as a positive good cannot be overthrown "unless we are prepared to maintain that the nature of coition is 'given' in every particular and for ever, in all its physical and metaphysical aspects, and so placed outside the realm of human decision" (*italics added*). Catholics do not maintain that the nature of coition is "given" in all its aspects; but they do maintain that it is "given" as to certain minimum physical essentials and that at least this minimum is placed outside the realm of human decision. The problem of deciding in practice just what that essential structure is leads necessarily to certain casuistical determinations which preoccupy both the matrimonial courts and the moral theologians. And there are bound to be differences of opinion when it comes to drawing the fine line that separates an essentially true from an essentially counterfeit marriage act. But since we do define and describe the minimum requisite for coition

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guards sexual morality itself by limiting sexual love to marriage and by excluding sexual aberrations from marriage.

Another reason for the change in Anglo-Protestant thought on the morality of contraception is their theory of the "ethic of liberty." This concerns not merely sexual morality but the entire moral law. Fr. de Lestapis thinks that the most fundamental explanation of the difference between Catholic and Protestant views on contraception lies in their different attitudes toward natural law. After citing many Protestant theologians, he concludes:

Hence, when faced with the possibility that man has a right to plan births, Protestant thinkers proclaim an ethic of individual freedom in Christ. The believer as he faces his God is the only judge in conscience, not only of the intentions which lead him to desire to limit births, but also of the validity of the means he employs for this purpose.³³

Catholic theologians usually designate this "ethic of individual freedom in Christ," as situation ethics. In its Protestant version, this consists, as we have explained in our first volume,³⁴ in the denial of absolutely binding moral norms and in the placing of the ultimate moral decision solely in the conscience of the individual and according to the situation in which he finds himself. The thoughtful reading of the defences of contraception that we have cited in this chapter (and these are typical of many not cited) shows that they are examples of the kind of thinking that

(*actus per se aptus ad generationem—seminatio intra vas*) the Catholic position is not open to the same logical consequences as the new concept of sexuality.

³³ de Lestapis, *op. cit.* (in footnote 30), pp. 29-30.

³⁴ Cf. *Contemporary Moral Theology*, Vol. 1 (Westminster, Md.: The Newman Press, 1958), ch. 8, "Situation Ethics: Some Further Observations", especially pp. 132-35.

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characterizes situation ethics. And the influence of situationism is also seen in the more recent official Anglo-Protestant statements, where the ultimate judgment of the morality of contraception is left to the married couple themselves "in Christian conscience."

If it is true—as it seems to be—that a basic reason for the more recent Christian defenses of contraception is the abandonment of absolute moral principles in favor of some form of situationism, this is another indirect argument in favor of the traditional teaching that contraception is immoral. For it is the inevitable tendency of the situationist to hesitate and give ground on the most important moral problems. One example is that of abortion. As we saw in Chapter 12, the Anglicans in one brief paragraph assert the inviolability of innocent human life and at the same time allow for the licit taking of that life "for strict medical necessity." The Mansfield Report makes the same allowance; and the statement of the National Council of Churches goes even further.³⁵

A similar weakening appears in the non-Catholic position regarding sterilization by the state. There is, on the one hand, the desire to safeguard the innocent person from any imposition by the state; yet, especially in the face of the population crisis, there is a noticeable hesitancy to propose this as an absolute. Of course, as we have seen in our own country, the totalitarian concept of the subjection of the individual to the good of the community has already been adopted by large numbers of Christians as regards eugenic sterilization. And one may well wonder how soon this concept might also be applied to the undernourished in overpopulated regions. A suggestion of this possibility is already

³⁵ Cf. *supra*, Chapter 12, pp. 253–54.

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contained in the committee report of the 1958 Lambeth Conference: "All likewise agreed that any government policy of compulsory sterilization as a means of population control is unacceptable to the Christian conscience, at least in our present state of knowledge and understanding; some indeed felt that such a policy could never be justified."³⁶ It was only "some" who considered this basic problem of human rights to be a closed question; the others were hesitant to give a final decision. This kind of hesitancy has usually been the prelude to a further moral concession.

From the foregoing it is clear that, as regards attitudes on sexual morality in particular or on moral laws in general, the traditional position, which defends moral absolutes and which applies them to sexual morality, is very strong. Nevertheless, our relative strength is no reason for complacency, because we still have problems to face and solve. Perhaps we might say that the one great problem is a more profound insight into the meaning of human sexuality. But, at least for purposes of illustration, we can break this down into two more concrete problems: the definition of coitus; and the inviolability of the sex act and the sex faculty.

In surveying one of the Anglican defenses of contraception, we pointed out that the author's refusal to define coitus makes his arguments open to serious objections. In particular, since he refuses to concede even the minimum definition of coition as an *actus per se aptus ad generationem*, he must logically admit that any practice that has "relational value" for spouses (e.g., coitus interruptus and anal intercourse) is licit. Moreover, since his position is typical of Anglo-Protestant defences of contraception (they make no essential and absolute distinction between the

³⁶ *The Lambeth Conference 1958*, Part 2, p. 148.

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various contraceptive techniques), the *de facto* value of our indirect argument is not only very strong; it is irrefutable.

The traditional position is not open to these precise objections. We do define coitus both philosophically and empirically; and our definitions are sufficiently clear to protect us against any logical admission of unnatural sex practices such as *coitus interruptus* and anal intercourse. But that does not mean that we are without problems. It is not easily seen, for instance, how our philosophical definition—*actus per se aptus ad generationem*—applies to naturally sterile intercourse. In Chapter 7 we explained the traditional solution to this problem. We are satisfied that the explanation is reasonable; but, as we also suggested, we think that further elucidation is desirable.

Moreover, one could admit our philosophical definition of coitus, as well as the empirical description (some penetration of the vagina and some ejaculation therein) and still defend many forms of contraception. Most contraceptive techniques, and certainly sterilization, allow for these minimum essentials. The rejection of these practices is found in the principle enunciated by the popes that the natural sex act (which, in this context, means more than the minimum essentials) and the faculty are inviolable. It is noteworthy, however, that though the popes enunciate this principle of inviolability and suggest that the basic reason for it is that the sex act and the sex faculty are associated with the beginnings of human life, they do not further elucidate it. Until this further elucidation is made, our natural-law arguments against contraception in all its forms are not complete. Here, as we see it, is a real challenge for Catholic scholars. And we may add that Catholics in particular can accept the challenge because they know, from the clear

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teaching of the Church, that contraception is intrinsically immoral. Hence, in striving to perfect natural-law arguments against contraception, they are not groping for the truth; they merely try to remove obscurities so that the truth may shine more brightly.³⁷

The mention of the teaching of the Church brings us back to the question with which we began this part of our chapter: namely, the reasons for the Anglo-Protestant recession from the traditional teaching that contraception is immoral. Fr. de Lestapis suggested two reasons: the new concept of sexuality and the "ethic of liberty." But a third, and even more important and fundamental, reason for the recession is the lack of a religious teaching authority. The present Anglo-Protestant position on the morality of contraception is a striking example of the moral necessity of a religious authority for an adequate knowledge of the natural law. In our first volume, we discussed Thomas Aquinas, the First Vatican Council, and Pius XII on this point.³⁸ Since we are dealing now with the precise question of marital morality, it seems appropriate to close the present chapter with the illuminating words of *Casti Connubi* on the same subject. In the third part of this great encyclical, Pius XI insists that

³⁷ *Op. cit.*, Ch. 1, "The Church and the Moral Law," pp. 4-12. See also Gerald Kelly, S.J., *Medico-Moral Problems* (St. Louis: The Catholic Hospital Association, 1958), pp. 149 ff.

³⁸ When the Church asserts that a truth is of natural law, she does not *ipso facto* become responsible for providing a convincing demonstration of that truth based on arguments derived solely from reason. Just as she can define a dogmatic truth as revealed without showing its exact sources in revelation, so she can infallibly teach that a moral truth is of natural law without giving in detail the arguments that convincingly demonstrate it. In both cases it is the task of theologians to elaborate these points; and examples are easy to find, both in dogma and moral, where the task is unfinished. In our opinion the case against contraception is one of these unfinished tasks, at least regards such points as these: the *per se* procreancy of sterile acts; the inviolability of the sex act, both essentially and intentionally; and the extent of the inviolability of the faculty. (For more on these latter points, see below, Ch. 16.)

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the first remedy for the abuses of marriage must be willingness to conform to the divine plan, that is, to the divine laws governing marriage. He continues:

The conformity of wedlock and moral conduct with the divine laws concerning marriage, without which its effective restoration cannot be brought about, supposes, however, that all can discern readily, with real certainty, and without any accompanying error, what those laws are. But everyone can see to how many fallacies an avenue would be opened up and how many errors would become mixed with the truth, if it were left solely to the light of reason of each to find it out, or if it were to be discovered by the private interpretation of the truth which is revealed. And if this is applicable to many other truths of the moral order, we must all the more pay attention to those things which appertain to marriage, where the inordinate desire for pleasure can attack frail human nature and easily deceive it and lead it astray. This is all the more true of the observance of the divine law, which sometimes demands hard and repeated sacrifices for which, as experience points out, a weak man can find so many excuses for avoiding the fulfillment of the divine law.

On this account, in order that no falsification or corruption of the divine law, but a true genuine knowledge of it, may enlighten the minds of men and guide their conduct, it is necessary that a filial and humble obedience towards the Church should be combined with devotedness to God and the desire of submitting to Him. For Christ Himself made the Church the teacher of truth in those things also which concern the right regulation of moral conduct, even though some knowledge of the same is not beyond human reason. For just as God, in the case of the natural truths of religion and morals, added revelation to the light of reason so that what is right and true "in the present state also of the human race may be known readily with real certainty without any admixture of error," so for the same purpose He has constituted the Church the guardian and the

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teacher of the whole of the truth concerning religion and moral conduct; to her, therefore, should the faithful show obedience and subject their minds and hearts so as to be kept unharmed and free from error and moral corruption. And, so that they shall not deprive themselves of that assistance given by God with such liberal bounty, they ought to show this due obedience not only when the Church defines something with solemn judgment, but also, in proper proportion, when by the constitutions and decrees of the Holy See, opinions are proscribed and condemned as dangerous or distorted.

Wherefore, let the faithful also be on their guard against the overrated independence of private judgment and the false autonomy of human reason. For it is quite foreign to everyone bearing the name of a Christian to trust his own mental powers with such pride as to agree only with those things which he can examine from their inner nature, and to imagine that the Church, sent by God to teach and guide all nations, is not conversant with present affairs and circumstances; or even that they must obey only in those matters which she has decreed by solemn definition—as though her other decisions might be presumed to be false or putting forward insufficient motive for truth and honesty. Quite the contrary, a characteristic of all true followers of Christ, lettered or unlettered, is to allow themselves to be guided and led in all things that touch upon faith or morals by the Holy Church of God through the Supreme Pastor the Roman Pontiff, who is himself guided by Jesus Christ Our Lord.³⁹

³⁹ AAS, 22 (1930), 579–81.

Sterilization: Some Special Problems

IN THE PRECEDING chapters on contraception we mentioned several times that there are some special problems relative to sterilization that call for separate treatment. These problems can be presented under the following headings: 1. The theological note of the church's condemnation of direct sterilization. 2. Moral principles pertinent to sterilization. 3. Hysterectomy with repeat cesarean section. The following chapter will discuss the new sterilizing drugs.

1. *The Theological Note*

When we discussed the theological note of the Church's condemnation of contraception, we concentrated on the condemnation expressed in the *Casti Connubii* because this is undoubtedly the most authoritative and most solemn of all the Church's statements against contraception. We concluded that the condemnation of contraception is "at least definable doctrine." Later in the same chapter, we suggested good reasons for including all contraceptive acts, and not

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merely onanism in the strict sense, in the condemnation. At the same time, we hesitated to include direct sterilization in this solemn condemnation, even though direct sterilization is the most radical form of contraception.

Our hesitancy to include direct sterilization in the solemn condemnation is not based on the text itself. The words used by Pius XI—"any use whatsoever of matrimony exercised in such a way that the act is deliberately frustrated in its natural power to generate life is an offense against the law of God and of nature"—could refer to contraceptive sterilization as well as to contraceptive acts. But the scope of a papal statement is determined not merely by a consideration of the text itself, but also by other circumstances. And all these other circumstances give reason to doubt that Pius XI intended to include sterilization in his solemn condemnation. In the first place, there is the context of the encyclical. Sterilization is given separate treatment in that document; and the only aspect of sterilization explicitly discussed is eugenic sterilization. The question of contraceptive sterilization in general is touched upon only by inference when the pope says that man's right to mutilate himself is limited by the natural finality of the bodily members and functions. Secondly, there are the factors pertaining to the historical background of the encyclical. Works on moral theology of the 1920s did not usually list sterilization under the methods of practicing birth control; if they discussed the topic at all, it was generally with reference to mutilation, not with reference to the abuse of marriage. Another historical factor is the Lambeth Conference of 1930. Pius XI certainly wanted to condemn contraception as approved by Resolution 15 of Lambeth, but it is by no means clear that the Lambeth approval of contraception

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could be extended to sterilization. Finally, there is the fact that in the Address to the Midwives, Pius XII first summarized the solemn teaching of his predecessor and then, in a separate paragraph, discussed sterilization.

From the foregoing, it seems doubtful that direct sterilization can be included in the solemn condemnation of contraception. What then is the theological status of the proposition that direct sterilization is intrinsically immoral? It seems to us that this proposition might also be defined, but in any event it is a truth which is contained at least by inference in *Casti Connubii* and which is clearly and explicitly contained in the authentic, but not infallible, teaching of Pius XII. In other words, in terms of the manner in which the Church's teaching has been proposed, the condemnation of contraceptive acts is more solemn than that of contraceptive sterilization.

When we say that the theological note for the condemnation of direct sterilization is somewhat lower than the note for the condemnation of contraceptive acts, we do not mean that, in itself, the immorality of contraceptive sterilization is less certain than the immorality of contraceptive acts. On the contrary, on the basis of mere rational argumentation, one could conclude that, since a contraceptive act (involving an interference with the generative act) is intrinsically immoral, contraceptive sterilization (involving an interference with the generative faculty) is a *fortiori* immoral.

Furthermore, contraceptive sterilization goes counter to the ancient and uninterrupted doctrine of the Church, just as does onanism. For example, the ancients believed in the efficacy of certain sterilizing drugs and potions. These "oral contraceptives" are mentioned explicitly and condemned as immoral by Augustine, Hippolytus, Chrysostom, and

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Jerome.¹ In the middle ages, and later, the commentators on the chapter, "De conditionibus apposis," of Gregory IX,² taking for granted that an agreement by the partners to use sterilizing drugs was immoral, discussed only the validity of a marriage contracted subject to such an agreement. A historical inquiry, century by century, would undoubtedly confirm the universality of this position. Ecclesiastical pronouncements were unnecessary to repudiate practices which nobody defended, and which everyone would recognize as certainly prohibited.

But the theological note refers, not to the certainty of the teaching in itself, but to the degree of authority with which the Church has proposed it. And it seems to us that up to this time the Church's condemnation of contraceptive acts has been given in a more solemn manner and with a higher degree of authority than has its condemnation of direct sterilization. The underlying reason for this may be that only recently has sterilization been widely popularized and widely defended as a legitimate method of regulating births. Besides, since sterility is a relative concept, especially in women, the question of sterilization, with its distinction between direct and indirect, permanent and temporary, involves more difficulties and complications than does the question of contraceptive acts.

2. Moral Principles Pertinent to Sterilization

Man is the steward, not the owner, of his bodily mem-

¹ Cited by Joseph Fuchs, J.S., *De Castitate et Ordine Sexuali* (Rome: Gregorian University Press, ed. 2a, 1960), p. 66, note 14.

² C. 7 X 4, 5: "Si conditiones contra substantiam coniugii inserantur, puta si alter dicat alteri; contraho tecum si generationem prolis evites . . ." Among the illicit methods of avoiding generation they mentioned the drinking of a "poculum sterilitatis" or "venena sterilitatis." See Dominicus Palmieri, *Tractatus de Matrimonio* (Prato, ed. 2a, 1897), thesis III, n. VI, p. 24.

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bers. He is not at liberty to do with them as he pleases, but must use them within the limits of his stewardship. Nevertheless, he is considered to be acting like a reasonable steward when, in cases of necessity, he sacrifices part of the organism for the good of the whole, even if this means disposing directly of a bodily member. For instance, he may cut off a gangrenous limb to save the life of the whole body. The moral principle involved in such mutilation is the principle of totality.

The generative faculty, however, has a unique inviolable character, because it is given to man principally for the good of the species rather than for his personal good. Hence man's power of disposal over it is subject to still further, special limitations. He may not directly destroy or mutilate the generative faculty, as generative, that is, he may not directly sterilize himself. Procedures which indirectly result in sterilization can be justified only in virtue of the principle of the double effect. This conception of the unique inviolability of man's sexual powers underlies the entire Catholic position on contraception.

As regards contraceptive sterilization this Catholic moral teaching is formulated in a reply of the Holy Office, February 24, 1940. The Holy Office was asked, "Whether the *direct* sterilization of man or woman, whether perpetual or temporary, is licit." It replied, "In the negative; it is forbidden by the law of nature . . ."³

Accordingly, in solving problems concerning the morality of sterilizing procedures, all these principles, the principle of stewardship, the principle of totality, and the principle of double effect, are called into play. The application of them, however, has become increasingly difficult in modern times.

³ AAS, 32 (1940), 73.

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We devote the rest of this chapter to the discussion of some of these difficulties.

One difficulty arises from the fact that many authors—taking their lead, it is true, from certain papal statements—have considered sterilization only under the aspect of mutilation and have attempted to explain its morality or immorality entirely in terms of the principle of totality. A review of some of the documents will indicate the origin of this difficulty.

Casti Connubii was mainly concerned with eugenic sterilization as imposed by state laws on innocent individuals, either against their will or with their consent. Pius XI insisted that when the state imposes sterilization on unwilling, innocent subjects it violates the natural rights of these subjects. But he also condemned the laws that provide for the so-called voluntary eugenic sterilization. On this latter topic he said:

Furthermore, Christian doctrine establishes, and the light of human reason makes it most clear, that private individuals have no other power over the members of their bodies than that which pertains to their natural ends; and they are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, *except when no other provision can be made for the good of the whole body.*⁴

This paragraph was often taken as the complete statement of the principle to be applied to all self-mutilations, including sterilization. And the interpretations of the concluding words (which we have italicized) included two extremes, both leading to embarrassing conclusions. One interpretation was so literal that it considered no mutilation of any

⁴ AAS, 22 (1930), 565.

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organs or functions justifiable if there were some other way, no matter how drastic, painful, or inconvenient, of providing for the good of the body. In a word, according to this interpretation, a mutilation had to be physically and absolutely necessary for the good of the body in order to be justifiable. To illustrate this, we may consider the case of a man with serious gall bladder trouble, who could avoid the pain and the danger either by going on a heroic diet the rest of his life or by having the gall bladder removed. This rigid interpretation of *Casti Connubii* would require him to go on the diet.

We have heard of theologians who would apparently give the strict interpretation of *Casti Connubii* just referred to. At least, it seems that this would be their own theoretical interpretation of the papal text; even though, as a practical solution they might allow the man to have his gall bladder removed rather than go on the diet. But the majority of theologians, we believe, would hold that the papal text should not be so rigidly interpreted. According to these theologians, a mutilation is permitted when a simpler and equally effective remedy is not reasonably available. Or, to put it in terms of necessity, a mutilation is permissible when it would be morally necessary for, or genuinely beneficial to, the subject.⁵

This broader interpretation of the celebrated paragraph on mutilation is certainly the preferable explanation when only non-sterilizing mutilations are considered. But when applied to sterilizing mutilations, the interpretation would lead to unacceptable consequences unless one kept in mind

⁵ For a discussion of these interpretations of the text of *Casti Connubii*, cf. Gerald Kelly, S.J., "Notes on Moral Theology, 1947," in *Theological Studies*, 9 (1948), 93-95; and John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 15 (1954), 604.

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the *special* inviolability of the generative function. For instance, in the case of a woman who could avoid a dangerous childbirth only by a salpingectomy or by complete abstinence from intercourse, this milder interpretation would logically allow the salpingectomy. That this solution is unacceptable we know, first from the general teaching of the Church that a direct sterilization is never permissible, and secondly, from the fact that Pius XII himself specifically rejected such a solution. This was in his address to the Italian Society of Urologists on Oct. 8, 1953. The urologists were mainly interested in the problem of removing the sex glands in the treatment of carcinoma of the prostate. Pius XII gave a favorable solution to this problem, but went on to say that it would be a false application of principle to give the same solution to the problem of dangerous childbirth. For our present discussion, it is well to give his exact words:

Three conditions govern the moral licitness of surgical intervention which entails anatomical or functional mutilation. First, the continued presence or functioning of a particular organ causes serious damage to the whole organism or constitutes a threat to it. Secondly, the harm cannot be avoided or notably reduced except by the mutilation which, on its part, gives promise of being effective. Finally, one can reasonably expect that the negative effect—i.e., the mutilation and its consequences—will be offset by the positive effect: removal of danger to the entire organism, palliation of pain, etc.

The decisive point here is not that the organ which is removed or rendered inoperative be itself diseased, but that its preservation or its functioning entails directly or indirectly a serious threat to the whole body. It is quite possible that, by its normal function, a healthy organ may exercise on a diseased one so harmful an effect as to aggravate the disease and its repercussions on the whole body. It can also happen that the removal

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of a healthy organ and the suppression of its normal function may remove from the disease—cancer, for example—its area for development or, in any case, essentially alter its conditions of existence. If no other remedy is available, surgical intervention is permissible in both cases.

The conclusion that we have drawn is deduced from the right of disposition that man has received from the Creator in regard to his own body, in accordance with the principle of totality, which is valid here also, and in virtue of which each particular organ is subordinated to the whole body and must yield to it in case of conflict. Consequently, he who has received the use of the entire organism has the right to sacrifice a particular organ if its preservation or its functioning causes to the whole a notable harm that cannot be avoided in some other way.

Since you give the assurance that in the case proposed the harm can be avoided only by the removal of the seminal glands, this removal does not give rise to any objection from the viewpoint of morality.

However we find ourselves forced to draw attention to a false application of the principle explained above.

It is not rare, when gynecological complications demand surgical intervention, or even apart from this, that healthy Fallopian tubes are removed, or else rendered incapable of functioning, in order to prevent a new pregnancy and the serious dangers that could perhaps result from it for the health or even the life of the mother, dangers whose cause arises from other diseased organs, such as the kidneys, the heart, the lungs, but which are aggravated in case of pregnancy. To justify the removal of the tubes the principle just cited is alleged and it is said that it is morally licit to interfere with healthy organs when the good of the whole demands it.

However, one appeals mistakenly to this principle. For in this case the danger that the mother runs does not arise, either directly or indirectly, from the presence or the normal functioning of the tubes, nor from their influence on the diseased organs—

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kidneys, lungs, heart. The danger appears only if voluntary sexual activity brings about a pregnancy that could threaten the foresaid weak or diseased organs. The conditions that would allow the disposal of one part for the good of the whole by reason of the principle of totality are lacking. It is therefore not morally permitted to interfere with the healthy tubes.⁶

Theologians were not surprised at either of these solutions. They had consistently taught that the section or ligation of healthy Fallopian tubes to prevent a harmful pregnancy was a direct sterilization and never permitted. And during the decade preceding the allocution to the urologists, many theologians had discussed the problem of castration in the treatment of cancer of the prostate, as well as of cancer of the breast, and all, as far as we know, had judged that such castration was in keeping with sound morality. In fact, *Ethical and Religious Directives for Catholic Hospitals*, first published by the Catholic Hospital Association of the United States and Canada in 1948, contained the following statement:

Castration, surgical or otherwise, is permitted when required for the removal or diminution of a serious pathological condition, even in other organs. Hence:

- a) oöphorectomy or irradiation of the ovaries may be allowed in treating carcinoma of the breast and metastasis therefrom;
- b) orchidectomy is permitted in the treatment of carcinoma of the prostate.

In all cases the procedure least harmful to the reproductive organs should be used, if equally effective with other procedures.⁷

⁶ AAS, 45 (1953), 674-75.

⁷ Cf. *The Linacre Quarterly*, Volume 15, July-October, 1948, pp. 5-6. After these hospital directives were printed in *The Linacre Quarterly*, they were published in booklet form. The booklet is entitled *Ethical and Re-*

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Although the theologians were not surprised at either of the practical solutions given by Pius XII, some did express surprise that the only principle explicitly invoked was the principle of totality. It seemed to them, for instance, that in justifying castration for cancer, the pope might have called attention to the fact that in this case the sterilization is only indirect and that the complete justification for the operation involved both the principle of totality and the principle of the double effect. On the other hand, the case of ligating or cutting Fallopian tubes to prevent pregnancy might also have been used to show how neither principle could be applied. In a word, these theologians were surprised that no explicit mention was made of the principle of the double effect in solving either of these cases.

Perhaps the theologians' surprise found an echo in Vatican City. At any rate, when discussing the use of hormones with the hematologists, Sept. 12, 1958, Pius XII made explicit mention of the principle of the double effect and also stated that he had applied the same principles when solving the problems for the urologists in 1953.⁸ And the principle of double effect, it should be noted, can be used when there is *proportionate reason* for permitting the evil effort, not merely when the proposed procedure is *the only way* of

ligious Directives for Catholic Hospitals (St. Louis: The Catholic Hospital Association of the United States and Canada). Currently in use is the 2nd edition, third printing. The directive on castration for cancer quoted in our text is n. 32 in the present edition. And in keeping with our present discussion, it might be well to quote n. 31, which reads: "Procedures that induce sterility whether permanent or temporary, are permitted when: (a) they are immediately directed to the cure, diminution, or prevention of a serious pathological condition; (b) a simpler treatment is not reasonably available; and (c) the sterility itself is an unintended and, in the circumstances, an unavoidable effect." These three conditions combine both the principle of totality and the principle of the double effect.

⁸ AAS, 50 (1958), 734-735. The Address to the Hematologists is mentioned only briefly here because we shall examine its wording more closely in the following chapter which deals with the so-called anti-fertility pills.

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achieving the good effect. Thus when the complete teaching of the ecclesiastical documents is presented the problem is considerably clarified.

This problem and its solution is clearly outlined in the following paragraphs from the pen of Fr. Denis O'Callaghan:

We have said that direct sterilization is contrary to the natural law and that it cannot be justified by an eugenic or therapeutic expediency. On the other hand, we know that direct mutilation is justifiable in certain circumstances, namely, when the good of the whole person demands the suppression of a function or the removal of an organ. So, for example, a surgeon may remove a gangrenous foot, a man trapped by the hand in a burning vehicle may cut off the limb in order to escape. Therefore, one who maintains that sterilization is reducible to mutilation will have difficulty in explaining why direct sterilization is always illicit. In fact sterilization adds a new dimension to simple mutilation. The individual organs of the body are immediately ordained to the good of the whole person; they are so absorbed by the whole that they possess no finality or purpose independent of the person. The generative function, however, has a finality of its own in that it is directed to the good of the species rather than to the good of the individual—consequently, since one must take account of this innate teleology, the principles governing its suppression are more complex than those for simple mutilation.

Of course, this immanent finality must not be exaggerated. If it were unlimited or unqualified it would grant to the generative function the status of an independent suppositum, and so the moral question of sterilization would be altogether analogous to that of killing the innocent. With regard to the reproductive faculty one must distinguish two natural ends, firstly, the reproductive organs are parts of the body and as such they are subordinated to the total good of the whole organism,

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secondly, the generative capacity is a social function and as such is directed to the species rather than to the individual. This distinction is extremely useful to the moralist. It explains why a direct attack on the God-given capacity to produce children is always illicit, since the natural objective of the generative faculty renders it independent of the individual and of the state. It also explains how the good of the whole organism may justify even complete excision of the generative organs, e.g., in radical cancer surgery, even though the capacity to produce children is thereby inevitably but indirectly destroyed. Accordingly, it would be incorrect and misleading to describe direct sterilization too loosely as the suppression of ovulation or as the destruction of the generative function—it must be defined strictly as the direct removal of the capacity to have children.

In accordance with this dual role of the generative organs, if sterilization is to be justified in a particular case it must be *therapeutic*, that is, it must satisfy the principle of totality, since it is mutilation or suppression of physical function, and it must be *indirect*, that is, it must satisfy the principle of double effect, since it involves the destruction of a function which possesses a finality independent of the good of the individual.⁹

Father O'Callaghan's conclusion that the justification of any sterilizing procedure requires the application of both the principle of totality and the principle of the double effect is in perfect accord with the pertinent papal statements, provided these statements are not taken singly and chronologically, but are combined and presented as a whole.¹⁰

⁹ Denis O'Callaghan, "Fertility Control by Hormonal Medication," *Irish Theological Quarterly*, 27 (1960), 1-15; see pp. 357 and 369.

¹⁰ What is said in this chapter about applying the principle of totality to self-mutilation should not be interpreted as excluding the possibility of justifying some degree of mutilation for the good of others. See, for example, what we have written jointly about human experimentation in *Theological*

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3. *Hysterectomy with Repeat Cesarean Section*

Even when the principles to be applied are clarified, their application to concrete cases is sometimes difficult. As Francis Hürth, S.J., once observed in an excellent discussion of direct killing, complicated surgical procedures make it especially difficult to determine whether an action is a direct killing; and he wisely suggested that the theologian withhold judgment until he clearly understands all the pertinent facts.¹¹ Perhaps the most celebrated example of our century is that of removing a pregnant fallopian tube before it ruptures. Only after Henry Davis, S.J.,¹² and especially T. L. Bouscaren, S.J.,¹³ clarified the point that even before rupture the tube itself is in a serious pathological condition were theologians able to reach a fairly common agreement that the removal of the pregnant tube before rupture might be considered an indirect killing of the fetus.

In some surgical problems involving sterilization it is also very difficult to determine whether the sterilization is direct or only indirect. A practical and well-known example of our own time is the case of hysterectomy with repeat cesarean section. That this problem is practical may be illustrated by the fact that during the last twenty years the present writers have been consulted about it at least one hundred times. As in most consultations about a real problem, there have been slight variations in the way the medical facts have been presented; but the essential problem contained in practically

Studies, 15 (1954), 76-77; and on organic transplantation, see *ibid.*, 17 (1956), 333, with the references given in footnote 32, and the argumentation given on pp. 341-44. This latter discussion is by Fr. Kelly alone; but Fr. Ford agrees with the view expressed by Fr. Kelly.

¹¹ Cf. *Periodica*, 40 (1951), 406.

¹² Cf. (*American*) *Ecclesiastical Review*, 77 (1927), 275-91; 405-14.

¹³ Cf. *Ethics of Ectopic Operations* (Chicago: Loyola University Press, 1933). The second, and revised, edition of this book was published by The Bruce Publishing Company, Milwaukee, 1944.

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all these consultations may be reduced to this: A woman is now pregnant for the fourth (or fifth, sixth, seventh, etc.) time. All her previous deliveries were by cesarean section, and her obstetrician now believes that when he does the next section he will find the uterus so much weakened that he cannot repair it adequately. In a word, his fear is that the uterus will be in such a condition that, even after repair, it will very likely rupture in a further pregnancy. The question proposed by the obstetrician and the mother is this: should this fear prove to be well-founded when the next section is performed, may the irreparably damaged uterus be removed as a seriously pathological organ?

This case is different from the generally accepted "clear" cases of direct and indirect sterilization. For instance, there is the case of the mother with cardio-renal disease which will prove dangerous in pregnancy, and to avoid this danger the physician wants to resect the fallopian tubes. Pathetic though this situation is, the proposed operation is obviously a direct sterilization. Its purpose is to protect the life of the mother precisely by destroying her reproductive power. Then there is the case of the woman whose non-pregnant uterus is afflicted by a serious and progressive disease such as cancer;¹⁴ for her hysterectomy is evidently an indirect sterilization.¹⁵ The purpose of the operation is to remove a serious pathological condition which presents a danger to life entirely independent of pregnancy. The damaged uterus is not a perfect parallel with either of these "clear" cases. Unlike

¹⁴ We limit discussion to the non-pregnant uterus because we wish to illustrate only the problem of indirect sterilization and not the added problem of loss of fetal life, which is the primary problem when the uterus is pregnant.

¹⁵ In some of these cases the disease may have progressed to the point where it has already effected sterility. In such cases, the operation would not be even indirectly sterilizing.

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the patient with the cardio-renal disease, this woman does have pathology in the reproductive system itself; but, unlike the patient with cancer, her condition, by supposition, will not progress to the point of danger unless she becomes pregnant.

Before outlining the opposing theological appraisals of excision of the damaged uterus, it may help to cite and briefly comment on n. 35 of *Ethical and Religious Directives for Catholic Hospitals*. The text reads:

Hysterectomy is not permitted as a routine procedure after any definite number of cesarean sections. In these cases the pathology of each patient must be considered individually; and care must be had that hysterectomy is not performed as a merely contraceptive measure.¹⁶

There have been, and apparently still are, physicians who think that routine tubal resection after the second or third cesarean section is good medicine. This practice is clearly contrary to the first sentence of directive 33: "All operations, treatments, and devices designed to render conception impossible are morally objectionable." Other doctors, with less obvious contraceptive intent, would want to adopt the rule-of-thumb that after some definite number of cesareans (perhaps two or three), a uterus may be presumed to have reached its "margin of safety" and should be excised. Directive 35 makes it clear that such routine hysterectomy is not permitted. Whatever may be said of the past, the practice is not good obstetrics today and, for that reason, if for no other, it is not sound morally. It is also clear from this directive, as well as from n. 33, that hysterectomy is never permitted for the precise purpose of sterilizing, i.e., as a contra-

¹⁶ For complete reference, see above, footnote 7.

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ceptive measure. Finally, in accordance with directive 35, as well as with the more general principle enunciated in n. 31,¹⁷ hysterectomy is certainly permitted when the damage done by previous cesareans or by any other cause is such that the cesarean hysterectomy is required in order to protect the mother from a danger that is already present, e.g., because of hemorrhage or infection.

Directive 35 was purposely worded in such a way as to avoid any ruling on the case we are now discussing: namely, the removal of a uterus which has been severely damaged by previous cesareans, but not to the extent that it creates danger independently of future pregnancy. The reason why the directive makes no ruling on this case is that it has been and still is a matter of controversy among theologians. The principal point of this controversy concerns the question: is the proposed hysterectomy a direct sterilization?

Typical of those who hold that the sterilization is direct is Louis Bender, O.P.¹⁸ He argues to this by showing that any means that would prevent pregnancy, even the sterilization of the husband, would be sufficient to protect the woman's life; consequently, the real object of the operation

¹⁷ Quoted in full in footnote 7, *supra*.

¹⁸ *Angelicum*, 30 (1953), 273-80. Agreeing with Fr. Bender that the operation is a direct sterilization are: Edwin F. Healy, S.J., *Medical Ethics* (Chicago: Loyola University Press, 1956), 174-75; and L. L. McReavy, *The Clergy Review*, 41 (1956), 485-89. Fr. Healy conceded neither extrinsic nor intrinsic probability to the opposite view; Fr. McReavy was dubious about the intrinsic probability, but was inclined to concede the extrinsic probability. When he first wrote on this problem, Francis J. Connell, C.S.S.R., stressed the fact that the operation is directly sterilizing. Cf. *American Ecclesiastical Review*, 123 (1950), 221. In the re-editing of this reply, nothing is said about sterilization; but, like Fr. Lohkamp and Fr. O'Brien (*infra*, footnote 19), Fr. Connell holds the operation to be illicit because there is no present danger. Cf. *Father Connell Answers Moral Questions*, edited by Eugene J. Weitzel, C.S.V., (Washington D.C.: The Catholic University of America Press, 1959), q. 72. This answer concludes with the sentence: "However, some theologians hold this operation to be permissible."

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; the prevention of pregnancy. We say that Fr. Bender's analysis is typical of the argumentation used by theologians who hold that the sterilization is direct because, no matter how they develop their argument, it always comes to this: there would be no danger without pregnancy; hence, the operation to remove the future danger is necessarily directed to the prevention of pregnancy.¹⁹

Other theologians, including ourselves, consider this analysis to be inadequate. It does not take full account of the facts of the case. It is true that the danger would not arise without pregnancy; but it is also true that pregnancy is not the only factor contributing to the danger. The other factor is the pathological condition of the uterus itself. Neither of these factors is sufficient of itself to create a danger of uterine rupture; both are required. That is why the elimination of either factor would remove the danger. Theologians who hold that hysterectomy in this case is not necessarily a direct sterilization deny that the prevention of future pregnancy is the sole immediate effect of the operation. They contend that with at least equal causal immediacy the operation removes the other factor, the pathological organ. Hence, if the operation is performed precisely with a view to removing the pathological organ, to prevent a future hemorrhage, it is not a direct sterilization either *ex fine operis* or *ex fine operantis*.

Some authors seem to think that the physician who performs the hysterectomy necessarily has a contraceptive in-

¹⁹ This objection is similar to one which was once considered rather telling for the argument against the removal of an ectopic tube. It was urged that since there would be no danger to the mother except for the presence of the fetus, an excision of the tube to prevent hemorrhage necessarily implied a direct attack on the cause of the danger, the fetus. The force of this argument has now been dissipated because it is recognized that the tube itself is affected by a pathology which is dangerous to the mother. Consequently one can remove the tube as pathological, in order to prevent a future hemorrhage, without a direct intention of killing the fetus.

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tent.²⁰ That this is not true may be illustrated by a quotation from an article by a group of doctors. After indicating some attempts to solve the problem of the dangerously damaged uterus by tubal resection (which these doctors recognize as immoral), they write:

In these patients we have accepted the line of thought that the uterus itself becomes the diseased organ. If this observation is conscientiously made, then by logic there is justification for its removal. The judgment should not be influenced by the number of previous cesarean sections, by sentimental, economic, or eugenic reasons. One then acts within the limits of clear scientific principles which are basically moral.²¹

In view of the argument that we have outlined, we believe that there is solid intrinsic probability for the opinion that the removal of the damaged uterus is not in itself a direct sterilization. And when the physician and patient have the intention expressed by the doctors just quoted, there is no contraceptive intent. The good effect intended is the prevention of uterine rupture, not the prevention of conception. It is true that the operation induces sterility; but in this it does not differ from many other applications of the principle of the double effect in which the evil effect is produced as an unavoidable by-product or concomitant.

There is, of course, solid extrinsic probability for the opinion that the hysterectomy is not a direct sterilization.²² And we might add that, generally speaking, those who hold

²⁰ Thus Fr. Healy and Fr. McReavy. See note 18.

²¹ "Total Hysterectomy at Cesarean Section and in the Immediate Puerperal Period," by Isadore Dyer, B.S., M.D., Frank Gilbery Nix, M.D., John C. Weed, M.S., M.D., and Curtis H. Tyrone, B.S., M.D., in *American Journal of Obstetrics and Gynecology*, 65 (1953), 517-27. The quotation in our text is taken from a reprint of the article, p. 9.

²² Those who, with ourselves, defend the intrinsic probability of the opinion are: John R. Connery, S.J., *Theological Studies*, 16 (1955), 575-

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that the operation is not directly sterilizing, also hold that, granted the conscientious judgment of competent physicians that the operation is medically indicated, there is a sufficient reason for permitting the indirect sterilization. Nicholas Lohkamp, O.F.M., objects to the operation precisely because he thinks there is not a sufficient reason. He writes:

Mutilation (and in this case also indirect sterilization) has heretofore not been permitted except to take care of some existing danger to life or health. But, even granting that the uterus, because of its defective condition, is the root cause of the danger (and this, it seems, must be granted), it is only a potential cause of danger, a cause which is present, but is, and will remain, inoperative unless pregnancy takes place. And even if pregnancy does take place, there is no certitude that rupture will occur. And if rupture does occur, only about 2 per cent of such mothers would die, if handled by a well-equipped institution.²³

We believe that Fr. Lohkamp's position is questionable on two points: (a) his speculative conviction that a present danger to life or health is required to justify mutilation; and (b) his practical appraisal of the danger which threatens the woman with the damaged uterus.

a) Is a present danger to life or health required? In his

76; John J. Lynch, S.J., *ibid.*, 18 (1957), 230-32; Thomas J. O'Donnell, S.J., *Morals in Medicine* (Westminster, Md.: The Newman Press, 2nd. ed., 1959) pp. 146-50. Those who admit the practical probability are: Miguel Campo, S.J., *Sal Terrae*, 42 (1954), 364-66; Jules Paquin, S.J., *Morale et Médecine* (Montréal: Comité des Hôpitaux de Québec, 3rd ed., 1960), pp. 267-69; M. Zalba, S.J., *Theologiae Moralis Compendium I* (Madrid: Biblioteca de Autores Cristianos, 1958), n. 1575. See also *Theological Studies*, 15 (1954) 68 f.

²³ *The Morality of Hysterectomy Operations* (Washington, D.C.: Catholic University of America Press, 1956), pp. 140-41. Patrick O'Brien, C.M., also considers the hysterectomy illicit because there is no present danger. Cf. Patrick Finney, C.M., and Patrick O'Brien, C.M., *Moral Problems in Hospital Practice* (St. Louis: Herder, 1956), p. 224.

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general treatment of mutilation in the early part of his book,²⁴ Fr. Lohkamp makes no mention of the need of present danger to justify a mutilation. This notion is first introduced when he explains the requirements for licit indirect sterilization.²⁵ Still later in the book it is enunciated as a requisite for all mutilations.²⁶ Many authors could be cited for the same opinion. But it should be noted that there is no proof for this opinion from either reason or papal statements. In fact, in the same paragraph in which Pius XII first referred explicitly to the principle of totality, he said that this principle could be used to justify mutilations to preserve life, to repair damage, and to avoid damage.²⁷ This papal statement is quite different from Fr. Lohkamp's assertion that, "if there is no present and actually existing danger to life or health, the principle of totality cannot be legitimately applied."²⁸

Furthermore, even if a present, existing danger were required, there is a true sense in which the damaged uterus constitutes such a danger in the circumstances of normal married life. For the purposes of the moralist, danger consists in a set of circumstances from which one can foresee with certainty or probability a future impending evil.²⁹ In normal married life the woman with a damaged uterus is in danger of conceiving again. To say that she can avoid this

²⁴ *Op. cit.*, pp. 17-19.

²⁵ *Ibid.*, p. 29.

²⁶ *Ibid.*, p. 139. Fr. Lohkamp is here explaining the passage on mutilation in *Casti Connubii*.

²⁷ Cf. AAS, 44 (1952), 782. It is true that Pius XII said: "to avoid or, naturally, to repair serious and lasting damage which cannot otherwise be avoided or repaired." But we have already seen that moralists have regularly allowed mutilations when the damage cannot "otherwise," that is by reasonably available means, be avoided or repaired. The papal documents have not excluded this understanding of the principle.

²⁸ *Op. cit.*, p. 29.

²⁹ For a further discussion of this concept of danger, see "Notes on Moral Theology, 1942," *Theological Studies*, 3 (1942), 579-607 at 589-91.

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danger by imposing perpetual abstinence on herself and her husband is to require a degree of heroism to which our moral principles do not oblige her. Once it is admitted that the resultant sterilization is not direct, the mutilation can be justified much as other mutilations are. In other mutilating operations we do not oblige the patient to omit surgery on the grounds that he can get the desired result by resorting to extremely painful or extremely difficult means.

b) Practical appraisal of the danger in the case of the damaged uterus. It seems to us that the full meaning of the danger to the mother is not brought out by Fr. Lohkamp in the paragraph we have cited. The threat presented by rupture of the uterus is not merely a matter of statistical mortality rates for the mother. For one thing, a large percentage of the babies are lost; and this is a source of great suffering to any mother. Secondly, though most mothers are saved, they are saved by exquisite surgical treatment and in most cases the uterus itself has to be removed. These various factors make rupture of the uterus a very serious complication of pregnancy, as any physician will attest and as an earlier part of Fr. Lohkamp's book makes clear.³⁰ When such a condition is a real probability, even though not certain, there is no doubt in our minds that it constitutes a sufficient reason for an indirect sterilization.

We can conclude this section with a brief consideration of a distressing and of an encouraging aspect of this problem of hysterectomy with repeat cesarean section. On the distressing side is the fact that many doctors do not understand the solution we have given and, if these doctors happen to be non-Catholic, they are likely to refer to the operation as a "Catholic sterilization." As best they can, those who follow our solution have to try to correct this misunderstanding

³⁰ Cf. *op. cit.*, pp. 116-118.

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by patiently explaining (a) that the solution is admittedly difficult because even moral experts do not agree on it; and (b) that the hysterectomy is permitted, not in order to avoid pregnancy, but simply to remove an organ which has become seriously pathological, that is, a uterus whose principal function has been damaged beyond safe repair. Such explanations will at least diminish the misunderstanding, even though they do not entirely remove it. And it is well to recall here that, even in some cases where theologians are in complete agreement that a procedure is only an indirect sterilization (or an indirect abortion or killing), the mentality of doctors often presents a problem. The distinction between direct and indirect, which means so much to theologians, is very often meaningless to physicians. They are accustomed to speaking broadly of "sterilization" and "termination of pregnancy," and they are prone to this manner of speaking even in cases where theologians very carefully designate a procedure as "indirect sterilization," or "indirect abortion."

On the encouraging side is the fact that medicine has made constant progress in cesarean surgery and in the treatment of ruptured uteri. This gives reason to hope that in the not too distant future the problem we have outlined here may become obsolete. But at the present time it is still a real problem; hence, what we have written has its practical value.³¹

³¹ Another intriguing, very difficult, but perhaps not quite so practical a case of surgical sterilization, which also illustrates the practical difficulty of applying the principle of double effect, was proposed by John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 15 (Dec. 1954), 594-626 at 605-6. Inmates of public institutions in certain states are often given the choice of remaining in the institution or submitting to sterilization. "Would a patient, or a near relative, be allowed in such circumstances to sign a document permitting sterilization?" Fr. Connery argues persuasively that one might in those circumstances sign the document, intending the operation to take place as mutilating but not as sterilizing.

16



Sterilizing Drugs

MANY CONCRETE PROBLEMS of surgical sterilization are difficult to solve. We discussed the case of hysterectomy with repeat cesarean section because we think that it is perhaps the most difficult of all these surgical problems, and because it illustrates the difficulty of applying the principle of the double effect in practice.

But today's search for the ideal contraceptive under the form of a sterilizing drug promises to open up a field of moral problems that will make the old surgical cases seem relatively easy. For the sterilizing drugs not only present problems of the principles of totality and double effect, but they may eventually force us to reconsider the very concept of direct sterilization especially as it applies to women, and consequently the reasons why it is forbidden, and the extent of our powers of stewardship where the generative faculty is concerned.¹

One of the early efforts to find a sterilizing drug presented

¹ It seems that some new drugs cause early abortion or the disintegration of the fertilized ovum. We are not considering these here.

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no real puzzle to the moralists. The drug was phosphorylated hesperidin. After it was taken in prescribed dosages by both husband and wife for ten consecutive days, it was supposed to render the wife's ovum impenetrable by the husband's sperm. This condition would then continue as long as the drug was taken and would disappear shortly after the drug was discontinued. Since the use of hesperidin, as just described, had no other purpose except to render conception impossible, theologians who wrote about it unanimously declared it a contraceptive measure, a form of temporary direct sterilization; therefore intrinsically immoral.²

Hesperidin apparently did not come up to expectations. It is no longer recommended as a contraceptive measure, although research is still going on to find some way of making an ovum impenetrable by spermatozoa and to destroy the penetrating power of spermatozoa.³ And research along these and other lines will no doubt continue at a rapid pace because the ideal contraceptive has not yet been found; and the alarm over the population problem will brook no delay.

As we write this chapter, the search for the ideal contraceptive is centered about drugs called progestational steroids. They are called progestational because they contain a substance that is chemically related to the female hormone, progesterone, which is normally secreted during the second half of each menstrual cycle and during pregnancy. And

² For moral appraisals of hesperidin, cf. John J. Lynch, S.J., "Fertility Control and the Moral Law," *Linacre Quarterly*, 20 (1953), 83-89; also "Another Moral Aspect of Fertility Control," *ibid.*, pp. 118-122; and André Snoeck, S.J., "Fécondation inhibée et morale catholique," *Nouvelle Revue Théologique*, 75 (1953), 690-702. Condensations of all three articles are in *Theology Digest*, 2 (1953), 99-105. When moralists say that hesperidin has no other effect than contraception, they are referring, as we do in our text, to the use of the drug as prescribed by Doctor Sieve. It is not for theologians to deny that hesperidin itself can have other uses.

³ J. Devaney and P. Reaves, *The Truth about the New Birth Control Pills* (New York: Popular Library, 1961), pp. 93-94.

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they are called steroids because they are produced by steroid chemistry, a branch of chemistry which studies the arrangement of atoms in certain substances and, by slightly changing this arrangement, also changes the properties of the substances. The female hormone, progesterone, as secreted naturally in the body, has among its effects the prevention of further ovulation, and therefore further conception, once a woman becomes pregnant. The progestational steroids are synthetic versions of the same hormone.

One effect of the progestational steroids, when they are taken in prescribed dosage for twenty days, e.g. from the 5th through the 24th day of the cycle, is to completely suppress ovulation during that monthly cycle. This is the effect stressed in literature about oral contraceptives. But contraception is by no means the only effect of the drugs; they can be put to an almost bewildering number of genuinely therapeutic uses.⁴ They have been used to promote fertility in persons previously infertile, to support pregnancy in women who were previously victims of habitual abortion, to relieve painful menstruation and premenstrual tension, to cure conditions involving either too much or too little menstrual bleeding, to alleviate the distressing condition of endometriosis, and (in the male) to reduce the sperm count to zero. To some extent, the varied effects of these drugs depends on the time they are taken. For example, according to a report on one of the steroids, when it was taken from day 5 to day 25 of the menstrual cycle, it was an effective contraceptive, and when it was taken from day 15 to day 25, it promoted

⁴ Cf. "Use of Some Progestational 19-Nor-Steroids in Gynecology," *Year Book of Obstetrics and Gynecology*, 1960-61 Series (Chicago: The Year Book Publishers, 1960), pp. 532-35. Editor of the Year Book is J. P. Greenhill, M.D. The Year Books since the 1957-58 Series have contained many items about the uses of the progestational steroids, especially Enovid and Norlutin.

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fertility in previously infertile couples. However, its use from day 5 to day 25 is not limited to contraception; usage according to the same schedule also has therapeutic effects, such as the cure of painful menstruation.

The new drugs are often referred to as anovulants because they are generally used by women and, when taken for twenty consecutive days (beginning with the 5th day of the menstrual cycle) they suppress ovulation. This, of course, effects a temporary sterilization; and this is the key to the principal moral problem involved in their use: namely, to determine whether the temporary sterilization is direct or only indirect. Pope Pius XII was aware of this problem. In his Address to Hematologists, Sept. 12, 1958, after giving examples of direct and indirect sterilization in surgical procedures, he went on to consider a "question often discussed today among moralists and doctors," namely:

Is it licit to prevent ovulation by means of pills used as remedies for exaggerated reactions of the uterus and of the organism, although this medication, by preventing ovulation, also makes fecundation impossible? Is this permitted to the married woman who despite this temporary sterility, desires to have relations with her husband? The answer depends on the person's intention. If the wife takes this medication not with a view to preventing conception, but solely on the advice of a physician, as a necessary remedy by reason of a malady of the uterus or of the organism, she is causing an *indirect* sterilization, which remains permissible according to the general principle concerning actions having a double effect. But one causes a *direct* sterilization, and therefore an illicit one, whenever one stops ovulation in order to preserve the uterus and the organism from the consequences of a pregnancy which they are not able to stand. Certain moralists pretend that it is permitted to take drugs for this purpose, but this is a mistake. It is necessary like-

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wise to reject the opinion of many physicians and moralists who permit the use of them whenever a medical indication renders a too early conception undesirable, or in other similar cases which it will not be possible to mention here; in these cases the employment of the drugs has as its end the prevention of conception by preventing ovulation; there is question, therefore, of direct sterilization.

To justify it they quote at times the moral principle, in itself correct, but wrongly interpreted: "*licet corrigere defectus naturae*" they say, and since in practice it suffices, in order to use this principle, to have a reasonable probability, they pretend that there is question here of correcting a natural defect. If this principle had unqualified validity, eugenics could without hesitation utilize the drug method to stop the transmission of a defective heredity. But it is still necessary to consider by what means the natural defect is corrected and to take care not to violate in any respect other principles of morality.⁵

Even before this address of Pius XII, several theologians had written about the moral issues involved in the use of the new pills, and since his address there have been many more theological discussions. No doubt these discussions will continue and gradually some of the obscure issues that have been raised will be clarified. At the time we write this, some solutions have been given merely tentatively. Our purpose here is to give the present theological status of the use of the new drugs. Before attempting this, it will be well to call attention to certain aspects of the papal statement just quoted.

It will be noted, first, that Pius XII speaks only in general about the new drugs, without naming any of them. Research is still progressing on these drugs. Their composition is being slightly altered and as these changes are made, new trade names are given the drugs. Since we are interested

⁵ AAS, 50 (1958), 735-36.

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solely in the effects produced by the drugs and the purposes for which they are actually used, these trade names are not of importance. Secondly, the pope speaks only of their use in women. The reason for this no doubt is that this seems to be their most common usage; but it is well to keep in mind that they can also be used in men, e.g., to reduce the sperm count.⁶ Thirdly, Pius XII mentions only the uses of the drugs which effect sterility, because his main interest is to bring out the distinction between direct and indirect sterilization. Here again it is well to recall that some uses of the drugs are not sterilizing. Fourthly, his words about indirect sterilization might be taken to mean that when sterilization is merely indirect the use of the drugs is *eo ipso* licit. However, there is still some question about the deleterious side effects of the new drugs; and it is at least a possibility that because of harmful side effects, or because no proportionate justifying reason exists for causing the temporary sterilization, in some cases the use of the drugs might be both medically and morally unsound, even when sterilization is induced only indirectly or even when no sterilization is effected.⁷

Finally, in the papal statement the sole criterion given for judging whether the sterilization is direct or indirect is the intention. This should not be taken to mean that the only criterion is the *finis operantis*. For if in some concrete case a pill or drug has no therapeutic value and its sole possible immediate effect is the suppression of procreative power, the sterilization would seem to be direct *ex fine operis*, and not merely *ex fine operantis*.⁸

⁶ On harmful side effects in men, cf. Devaney and Reaves, *op. cit.*, pp. 84-86.

⁷ On harmful side effects in women, cf. Devaney and Reaves, *op. cit.*, pp. 52-54.

⁸ For a clear general analysis of direct and indirect sterilization, cf.

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The papal address and theological writings suggest the following division for briefly outlining the morality of using the new sterilizing drugs: (1) clearly contraceptive uses; (2) clearly therapeutic uses; (3) probably licit uses; and (4) future problems.

(1) *Clearly contraceptive uses.* In popular literature and, to an increasing extent, in the medical literature), the new sterilizing drugs are most frequently referred to as "anti-fertility pills," "oral contraceptives," "contraceptive pills," and so forth. In other words, they are most generally thought of as "straightout contraceptives." Moreover, when they are used by women, the effect frequently sought is contraceptive. Theologically, this common usage must be characterized as direct temporary sterilization. This is clearly the case, whether the woman is healthy or whether she suffers from an illness which is not directly affected by the drugs. An example of the latter would be the use of the drugs by a woman with a heart disease that would be seriously aggravated by pregnancy. We know of no theologian who has defended this usage; Pius XII, nevertheless, seems to have had knowledge of some theological defenses of the practice.

But one theologian has (tentatively, it is true) approved a use of the drugs in a case which seems to us to be just as clearly contraceptive. The case concerns a woman who is severely disturbed by a mental illness because of a pathological fear of pregnancy. The remedy suggested, and hesitantly approved by the theologian, is to suppress ovulation by means of the drugs and thus remove the fear of pregnancy and thus help the woman to attain emotional equilibrium. We agree with Joseph Fuchs, S.J., that the correct

Periodica, 29 (1940), 149c-149d. The anonymous author (commenting on the decree of the Holy Office) speaks of *sterilizatio directa ex natura actus* instead of our *ex fine operis*.

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analysis of this case is that the laudable objective of curing the emotional illness is brought about precisely by direct sterilization;⁹ and we find it difficult to understand why any theologian should hesitate to draw this conclusion.

Besides the fact that contraceptive use of the drugs is immoral precisely because contraceptive, there is a further reason for questioning their licit use in this context: namely, that the risk of harmful side effects, especially when the drugs are used over long periods of time (as they generally would be when used as contraceptives), might be unjustifiable. This, of course, is not our essential reason for objecting to them, but it is a reason too often lightly dismissed by enthusiasts for the oral contraceptives.¹⁰

(2) *Clearly therapeutic uses.* In some cases the new drugs produce beneficial effects without even indirectly sterilizing. Thus, according to one report concerning the promotion of fertility in previously infertile women, the drugs were given when ovulation had already taken place or at least at a time when they would not impede ovulation. Also, when they are used to prevent miscarriage there is no sterilizing effect. And another use that does not necessarily imply anovulation is the relief of premenstrual tension. In cases such as these, there is no moral problem by reason of sterilization. Whether, in particular instances, there might be a problem because of possibly harmful side effects of the drugs is for the doctors to decide.

But the use of the drugs in the treatment of endometri-

⁹ Joseph Fuchs, S.J., "Nota de aliquo casu recentiore 'sterilizationis therapeuticae,'" *Periodica*, 50 (1961), 31-38.

¹⁰ See the striking remarks of John J. Lynch, S.J., "Notes on Moral Theology," *Theological Studies*, 21 (1960), 232, "In view of the medical profession's confessed inability even yet to guarantee against seriously detrimental long-range effects of this 'medication,' by what professional ethic does one justify the use of uninformed human subjects in an experiment to which certain doctors in this country on their own testimony would not allow their own wives and daughters to submit?"

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osis, painful menstruation, excessive menstrual bleeding, and so forth, usually involves anovulation with consequent temporary sterilization.¹¹ This sterility, however, is not the means employed for producing the beneficial effects; it is only a concomitant of the treatment designed to change the hormonal patterns associated with these disorders. Hence, when used for the correction of the disorders and not to induce sterility, the treatments are clearly therapeutic and only indirectly sterilizing. In the absence of unjustifiable side effects, they are undoubtedly licit.

(3) *Probably licit uses.*

a) "Rebound" therapy. Speaking of one of the progestational steroids, John J. Lynch, S.J., first mentioned its beneficial use in protecting against miscarriage and also in the promotion of fertility in previously infertile women by stimulating ovulation. He then added:

Still another phenomenon, which is perhaps theologically most fascinating of all, is the so-called "ovulation rebound." This has been observed in a limited number of infertile women with a history of normal ovulation. Over a period of three months ovulation was totally suppressed. The medication was then withdrawn and within a few months a significant percentage of these previously infertile women had achieved pregnancy. Again we have an ultimate effect which unquestionably may be the licit object of direct intention. The problem for discussion, it would seem, is whether the means employed to achieve that effect is licit.¹²

This problem was presented at a seminar of moral theo-

¹¹ Women with endometriosis are frequently sterile. In such cases the drugs would not be sterilizing.

¹² John J. Lynch, S.J., "Moral Aspects of Fertility Control," *Proceedings of the Thirteenth Annual Convention of the Catholic Theological Society of America* [1958], pp. 127-138 at 134.

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logians which was held in conjunction with the thirteenth annual convention of The Catholic Theological Society of America. We can best indicate the theological pros and cons by quoting the report of the discussion of the problem:

In reference to the "ovulation rebound" phenomenon, Father Thomas Donlon, O.P. (St. Rose Priory, Dubuque, Iowa) questioned the lawfulness of the procedure on the grounds that the preliminary deliberate suppression of ovarian function—even though undertaken for a legitimate and laudable purpose—would appear to be a direct temporary sterilization. While agreeing that the suppression of ovulation in the circumstances would be directly intended, Father Lynch was unwilling to identify the procedure in this case with sterilization properly speaking. Is it realistic, he asked, to speak of sterilizing a woman who for all practical purposes has proven herself to be already sterile? In the course of the subsequent discussion it was suggested that it is not precisely the direct suppression of ovulation which is intrinsically wrong, but rather is it the resultant sterility, or inability to procreate, which may not be the direct object of one's intention. That the two are not necessarily identical is clear, for example, in the case of a woman who has already undergone hysterectomy. Ovariectomy, if subsequently performed on this woman, surely would not be called a sterilization in a proper sense of the word. So, too, in cases where "ovulation rebound" might be attempted in the infertile woman: the ovarian function is temporarily suppressed, but the woman cannot be said to be thereby sterilized since she is already sterile.¹³

We agree with the solution that, since the woman is already presumably sterile, the suppression of ovulation is not a sterilization. And we might call attention to the fact that

¹³ *Ibid.*, p. 137. The discussion was recorded by Robert H. Springer, S.J.

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similar "rebound" therapy has been used with some degree of success in the treatment of male sterility. The rationale of the treatment was to suppress spermatogenesis completely over a period of time, with the hope that, when the medication was withdrawn, the sperm count would rise to fertility level. Several years ago, the male hormone, testosterone, was used for this purpose;¹⁴ and it seems that more recently the same result was achieved through the use of a progestational steroid.¹⁵ It seems to us that, since the men thus treated were already infertile by reason of low sperm count, the temporary suppression of spermatogenesis would not really effect sterilization.

But in addition it may well be possible to use the principle of double effect in explaining the lawfulness of the rebound procedure, at least in the case of women, and possibly also in the case of men.

As indicated in the above discussion, suppression of ovulation, even when directly intended, is not necessarily the same thing as sterilization directly intended. Even the direct excision of the ovaries themselves (for example, in breast cancer) is not necessarily a direct sterilization. It is the excision of the ovaries as generative, or the suppression of ovulation as generative (that is, inasmuch as they contribute to conception and with a view to preventing that conception), which is forbidden.

We await further physiological information as to the pre-

¹⁴ See John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 17 (1956), 581-82, and his footnote references to medical discussions.

¹⁵ Like the testosterone therapy, some progestational steroids can reduce the sperm count to zero; then, when the drug is discontinued, the count rises at times beyond pretreatment level. Cf. *Year Book of Obstetrics and Gynecology*, 1959-1960 Series (Chicago: The Year Book Publishers, 1959) . 534. But see *supra*, footnote 6, on harmful side effects in the use of these steroids by men.

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cise action of the drugs, and the precise physiological implications of ovulation. The processes involved are very complicated. Ovulation itself, contributing the essential egg to the generative process, seems to involve other processes and to have its effect on the whole system, for example on the endocrine system. If the ovulation itself is not taking place in a normal, healthy manner it may even have an adverse effect on the achievement of conception. To suppress it inasmuch as it is an obstacle to conception would definitely not be to suppress it as generative. Is not the very fact that the temporary suppression of ovulation (or for that matter of spermatogenesis) can result in or be accompanied by a renewal of fertility sufficient reason for concluding that in the rebound phenomenon there is no suppression of function precisely as generative?

The twofold effect here could be explained in various ways. The drug may result with equal causal immediacy in cessation of ovulation and in healthy functioning of the whole generative system. Or if this healthy functioning comes about through the cessation of ovulation itself (which has not been shown), the twofold effect of the suppression is temporary sterility and the healthy functioning of the whole system. Something similar might be worked out in men: spermatogenesis is also a complicated process.¹⁶

The double effect explanation would be useful in cases where physicians wanted to use the rebound effect to increase fertility. Fertility and sterility are relative terms. Sup-

¹⁶ See Francis J. Connell, C.S.S.R., "The Morality of Ovulation Rebound," *American Ecclesiastical Review*, 143 (Sept. 1960), 203-205. A possible explanation of the rebound phenomenon is that the drugs have a therapeutic effect on an undiagnosed case of endometriosis (a disease of the womb often causing infertility). If this is the case, the applicability of the principle of two-fold effect is obvious. cf. John J. Lynch, S.J., "Progestational Steroids: Some Moral Problems," *Linacre Quarterly*, 25 (August 1958), 93-99 at 99, note 12.

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pose a case where the woman is not sterile; she is fertile, but not sufficiently fertile, so that she has great difficulty in conceiving. Or suppose a case of a man with low fertility. In such cases use of the rebound phenomenon could hardly be justified on the grounds that the persons are already sterile. But would it not be permissible to use the rebound theory and procedure in such cases, justifying it on the principle of the double effect?

b) *Regulating ovulation.* According to Catholic teaching, the only licit means by which married couples may void childbirth or space children is some form of continence, either continuous or periodic. The essence of periodic continence as a means of family limitation consists in abstaining from conjugal intercourse during the wife's fertile period: that is, at the time of ovulation and for a short time before and after ovulation. Obstacles to success in this method are (besides the problem of self-control) the difficulty of knowing the precise time of ovulation, great variability of the ovulatory cycle from month to month, and the possibility of an extra ovulation. In 1951, Pope Pius XII expressed the hope that science would soon be able to provide a secure basis for this "natural" method of family limitation so that those who would have good reasons for such limitation could successfully achieve their goal without any moral fault.

Scientific helps towards the desired security for periodic continence might take two forms: first, a perfect method of *detecting* the time of ovulation; and secondly a perfect method of *regulating* ovulation. Up to this time, three principal methods for detecting or calculating the time of ovulation have been employed: the calendar method, the body-temperature method, and the testape method. Each of these alone or in combination with the others, has met with some

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success, but none of them is perfect. Consequently, those who are interested in perfecting periodic continence as a means of family limitation are beginning to think more and more in terms of some positive means of regulating ovulation. This has introduced a moral problem which is not present in the attempts to detect or calculate ovulation. In calculating the time of ovulation, one merely studies the female physiological processes in order to know when ovulation takes place. In regulating ovulation, there must be some adjustment of, and may possibly be some interference with, the physiological processes. Any regulatory method, therefore, must be scrutinized to see whether it involves a forbidden mutilation or sterilization. The principle of totality and the principle of double effect, though not always satisfyingly clear in their application, do allow us in the light of our present knowledge of the medical facts to solve some of these cases with practical probability. For other cases which are of a more hypothetical kind, and which seem to go beyond the principle of double effect for their solution, it seems to us that further medical facts and further clarification of the concept of forbidden sterilization are required before we are ready to record our personal *nihil obstat*.

Does there *de facto* exist any regulatory method? At the time we write this, no really successful method has been discovered, and this point should be emphasized lest false hopes be raised.

One possibility, suggested by a physician, is that ovulation may be regulated merely by regulating menstruation. According to this plan, the doctor waits till after ovulation has taken place and then puts the patient on the 10-day premenstrual dosage of a progestational steroid. This will bring about menstruation at a scheduled time; and the doctor

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opes that this, in turn, will react on the next cycle so that ovulation will take place at a definite, invariable time. In his case no sterilization of any kind seems to be involved. But if an unforeseen extra ovulation is eliminated this is an accidental effect of the treatment, and could be justified on the principle of the double effect. Almost all moralists, we think, would agree that this procedure is unobjectionable. Whether it would work or not is, of course, a question that only physicians can decide.

Another possibility, the one which has received the most attention from moralists, was outlined by a physician as follows: he planned to give a patient with a very irregular ovulatory cycle the standard 20-day dosage of one of the well-known progestational steroids. They would be ingested orally for 20 consecutive days, beginning on the fifth day of the cycle and stopping on the 25th so that menstruation would occur, then resumed again on the fifth day of the new cycle, and so on. This would continue for the allotted period of months, perhaps three or four, during which time no ovulation could occur. The rationale of this treatment was that when given over such a period of time these medications would act as a sort of shock to the entire endocrine mechanism connected with ovulation, so that, when the medications were withdrawn at the end of several months treatment, the ovulatory cycle would be balanced and normal. The purpose of the treatment would be to make the practice of rhythm possible or more secure. Relations would be permissible, of course, during the period of treatment.

To avoid popular misunderstanding of this (or any comparable procedure) two important points should be kept in mind. First, it is very questionable medically whether it works, and we should beware of vouching for its effectiveness. Second, the object of the treatment is to establish a

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regular cycle of ovulation-menstruation, not mere regularity of menstruation while always suppressing ovulation.

In addition, one should keep in mind that many, if not all, the moralists who defend the above procedure, do so by invoking the principle of double effect. Fr. John J. Lynch, S.J., remarks that the moralists assume,

on the authority of certain doctors who have proposed the treatment as medically feasible, that the regularity of ovulation eventually to be achieved is not due causally to the temporary period of sterility which also occurs in the patient, but is rather the immediate effect of the restoration of hormonal balance which the medication achieves. Temporary sterility, in other words, is not the directly intended means whereby regularity of ovulation is accomplished, but rather an indirect by-product of therapy whose direct result is regularization of the ovulatory cycle.¹⁷

At a seminar held at the 1958 convention of the Catholic Theological Society of America, Fr. Lynch had proposed the moral question in the following terms:

In case of irregular cycles of ovulation, would the principle of totality, combined with the principle of double effect, suffice to justify the temporary use of antiovolants if they should prove effective in regularizing the cycle and could thus make possible an effective use of rhythm under the usual conditions?¹⁸

He answered the question in the affirmative. In the discussion which followed, the main doubts expressed by theologians concerned the sufficient reason for such therapy.

¹⁷ "Notes on Moral Theology," *Theological Studies*, 23 (June, 1926) 233-65 at 244.

¹⁸ "Moral Aspects of Pharmaceutical Fertility Control," *Proceedings of the Thirteenth Annual Convention of the Catholic Theological Society of America* [1958], pp. 127-38 at 135.

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Those who expressed these doubts wanted to make it clear that, in their opinions, slight variation of cycle could not be considered abnormal. Hence they would not be pathological; hence there would be no sufficient reason for the therapy. It was then asked just what degree of irregularity could constitute an anomaly. Fr. Lynch's answer to this was to suggest as a rule of thumb

that one might judge as abnormal, and hence as legitimate reason for medical intervention, that degree of irregularity which would preclude a reasonably effective use of rhythm—in other words, an irregularity which would prompt a competent gynecologist in a particular instance to advise against rhythm as an effective means of avoiding pregnancy.¹⁹

In the same discussion, John R. Connery, S.J., suggested that normalcy might be roughly considered as "one ovulation per calendar month, and that any notable deviation from this regularity might legitimately be termed an anom-

¹⁹ *Ibid.*, p. 137. At the same seminar, (*ibid.*), the question arose whether use of the new drugs in order to suppress menstruation at the time of an important athletic contest could be permitted, even if it involved suppression of ovulation. We believe that the essential point at issue in this problem is not whether sterilization is direct, but whether there is sufficient reason for permitting the temporary, occasional, indirect sterilization. To judge this one would have to know how important the contest is, how much inconvenience menstruation would be, whether it is reasonably possible to suppress the menstruation without interfering with ovulation, and whether there are medical contra-indications to such treatment because of harmful side effects. It is conceivable, it seems to us, that a justifiable case might occur. On the other hand the problem may be purely academic. See "What is the Athlete's Menstruation Secret?" *Pageant*, 17, n. 7 (Jan. 1962) 71-72: "The U. S. Olympic Association reports they have never had a case of a woman dropping out of competition because of her period. A recent issue of *Medical Tribune* pointed out that Wilma Rudolph won her 1960 Olympic Gold Medal on the third day of her period. . . . Several years ago . . . an American coach was accused of administering a drug to delay the periods of our woman entrants. The U.S. team not only denied the charge, but laughed at it. The drug was the last thing on earth the athletes would have taken."

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aly." Apparently, this suggestion was made merely as a concession to those who required abnormality or pathology as a justifying reason for medical intervention, because later Fr. Connery made it clear that he did not think that pathology of cycle is required. "I see no moral reason," I wrote,

why one must be limited to what is normal. It seems to me that perfect regularity is as legitimate a goal as perfect health or perfect vision. As long as nothing is done to suppress ovulation in any particular cycle, I do not think the use of drugs to pinpoint the day of ovulation can be considered sterilizing in any real sense. Sterilizing does not consist in determining ovulation; it consists in suppressing it. I would feel quite sure that if the drug were used to determine ovulation accurately with a view to actually achieving a pregnancy, no one would object. If it is not wrong in this instance, I do not see why it must be questioned when used to avoid a pregnancy by those who have a legitimate reason to do so.²⁰

Writing in July, 1957, Francis J. Connell, C.S.S.R., was among the first to sanction regulation of the cycle by means of one of the new progestational steroids:

... since the drug apparently can either cause or prevent ovulation and menstruation, depending on the different schedules followed in its use, it would seem that if it is used to give a woman a normal cycle of twenty-eight days for ovulation and menstruation, its use is perfectly lawful.²¹

A few years later, Fr. Connell returned to the same theme

²⁰ John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 19 (Dec. 1958), 533-571 at 550.

²¹ "The Contraceptive Pill," *American Ecclesiastical Review*, 13 (1957), 50-51 at 50.

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After explaining that the pills might licitly be used to correct a pathological condition, despite their temporary indirectly sterilizing effect, he said:

If the pills are used for the purpose of making a woman's periods regular, they are also morally permissible. For everyone has the right to be normal. For example, if a woman's menstrual period varies from 20 to 40 days, she may use these progestational steroids in order to have it happen every twenty-eight days. I have heard that the use of the pills for this purpose is not very successful, but I am here concerned only with its moral aspect. Even if a couple wish to attain regularity of menstruation so that they may practice Rhythm in order to avoid conception, they are allowed to use the pills, provided they have sufficient justification for the use of Rhythm.²²

From the discussions thus far cited, we note two distinct questions with reference to the use of the progestational compounds (or other drugs) for regulating the ovulatory cycle so that rhythm can be practiced. The first question concerns the cycle that is so variable that it makes the practice of rhythm very insecure, if not relatively impossible. The second question moves a step beyond this by considering what is called the perfecting of the cycle, i.e., by aiming at such precision of cycle that ovulation would take place on schedule about every 28 to 30 days, and thus the practice of rhythm would be relatively easy and perfectly secure.

Survey articles by Denis O'Callaghan and Nicholas Crotty, C.P., consider both these questions.²³ And both

²² "The Morality of Ovulation Rebound," *American Ecclesiastical Review*, 143 (Sept. 1960), 203-205 at 203-204.

²³ Denis O'Callaghan, "Fertility Control by Hormonal Medication," *Irish Theological Quarterly*, 27 (1960), 1-15; Nicholas Crotty, C.P., "The Moral Issues in Hormonal Control of Fertility," *Australasian Catholic Record*, 38 (1961), 102-113.

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authors agree that when the cycle is extremely variable, as in the first question, there is definitely a pathological irregularity that justifies regularization by chemical therapy. On the question of merely perfecting the cycle, Fr. Crotty is hesitant. For him, this is a borderline case that requires more data and more thought. But Fr. O'Callaghan, while recognizing that pin-pointing a cycle for perfect regularity may be open to abuse, thinks that the procedure is in itself a legitimate moral objective. He writes:

The essence of the female reproductive cycle is one ovulation per month, and since some variation in the length of the cycle is observed in almost all women this cannot be regarded as unnatural. Therefore, in this case we cannot appeal to any "pathology" or abnormality of function. The crucial question is: does the positive determination of the constant 28 day cycle constitute a frustration or a perfection of the natural function? When one considers how the delicate endocrine mechanism is geared to effect a uniform pattern it seems ridiculous to regard the more precise adjustment of this pattern as a suppression of function. Certainly it is not essential to the natural function that the precise date of ovulation be uncertain. If this adjustment were made in order to ensure intercourse at the time of maximum fertility so that the chances of conception would be enhanced, one feels certain that no one would be found to condemn it. So, too, when the purpose of this treatment is to make the use of the safe-period more secure, the intention does not alter the moral judgment on the act. If married persons are entitled to restrict their intercourse to the safe-period, they are entitled to make their use of it more effective by any lawful means which respects the natural context of reproduction.²⁴

Among the few who explicitly oppose the use of the drugs

²⁴ O'Callaghan, *art. cit.* (footnote 23), p. 13.

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to regulate the cycle is M. Thiéffry, S.J.²⁵ L. L. McReavy also seems to prefer the negative side, while admitting the probability of the affirmative.²⁶ His reason is a doubt whether irregularity of ovulation can qualify as pathological. Fr. Lynch replies:

In the strict medical sense of the term, of course, it cannot be so considered, since it is not necessarily a threat to physical health. But in so far as it may be a notable departure from what should be the normal physiological rule in women—though even this contention is not established beyond all doubt—irregular ovulation may qualify as an abnormality which one is entitled to correct if licit means are available. As Fr. McReavy notes, Pius XII was quite tolerant of certain forms of cosmetic surgery performed not in order to remedy a strictly pathological condition but merely for the sake of correcting a defect in physical appearance. It would seem altogether reasonable to concede that normalcy of physical function, no less than normalcy of physical appearance, should be included within the notion of *bonum totius* as that concept is employed in the principle of totality.²⁷

It appears that there is considerable agreement among moralists that some kind of chemical therapy is licit when the ovulatory cycle is such that the use of rhythm is very

²⁵ M. Thiéffry, S.J., "Stérilisation hormonal et morale chrétienne," *Nouvelle Revue Théologique*, 83 (1961), 135-58.

²⁶ L. L. McReavy, "Use of Steroid Drugs to Regularize Menstrual Cycles," *Clergy Review*, 46 (Dec. 1961), 746-50.

²⁷ John J. Lynch, S.J., "Notes on Moral Theology," *Theological Studies*, 23 (June 1962), 233-265 at 245. Cf. Pius XII, Address to the Tenth National Convention of the Italian Society of Plastic Surgery, AAS, 50 (1958), 952-61. This was the last of the late Pontiff's many allocutions. Numerous motives, he held, would justify cosmetic surgery and many would make it advisable. On the other hand, such surgery cannot be justified for mere vanity or whim; or for a criminal to hide from justice; or to increase one's power of seduction; or with risk of causing damage to the normal functioning of bodily organs. *Loc. cit.*, pp. 958-59.

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difficult or impossible. We concur in this opinion, and with the statement of Fr. Lynch: "That their opinion is presently both intrinsically and extrinsically probable would appear to be beyond reasonable doubt."²⁸ When the temporary suppression of ovulation over a period of months is not the precise aim of the treatment, but only a by-product of the total objective, there is at most an *indirect* sterilization; and the serious need of achieving regularity justifies the incidental sterilization in accordance with the principle of totality.

We would be more hesitant, however, to say that moralists tend to be in agreement in allowing the treatment to bring about a cycle of average length in cases where there is a lesser irregularity, that is, one which is not so irregular as to be called abnormal, nor so irregular as to preclude the practice of rhythm, but one which makes rhythm more difficult or more uncertain. Nevertheless, enough has already been written in favor of this to enable us to judge that, as of now, the opinion is solidly probable. Provided the medication itself were not illicit by reason of unjustifiable side effects or of direct sterilization, we think that physicians may with a good conscience inaugurate treatment with the progestational steroids or other chemicals when the purpose of this treatment is to make the ovulatory cycle approximate average length with regularity, so that periodic continence may be more safely practiced by those who have good reason for practicing it. We think, moreover, that a 28 to 30 day cycle may be chosen as the goal because, as far as we have been able to ascertain, it is the practically universal tendency of physiological and medical treatises to refer to such a cycle as typical or average. A woman with such a cycle ovulates

²⁸ *Ibid.*, p. 245.

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about 13 times a year, and would be said, we believe, to be of average fertility as far as this aspect of fertility is concerned. Hence without designating other cycles as abnormal in the pathological sense, we believe we are justified in considering the 28 to 30 days cycle as the most "normal" in the sense of coming closest to the average. Women who take this as a goal for treatment seem to be acting within their natural right of reasonable stewardship over their bodily members and functions.

The opinion we have expressed here is in accord with what some theologians have written and many others have told us in discussions. But all of us realize that we are here dealing with what some have called a "twilight zone," where the distinction between a licit method of family limitation and a directly sterilizing technique is finely drawn. And we would certainly agree with William J. Gibbons, S.J., and Thomas K. Burch when they write: "For treatment of this sort to be morally licit, it may go no further than being merely 'regulatory' or corrective." By this they mean a treatment "which would presuppose a goal of normal cyclical function, with ovulation, and hence fertile days, occurring on schedule," in contradistinction to a treatment "which seeks to frustrate nature by eliminating ovulation through suspension of function."²⁹

4) *Future Problems.* Theologians are now foreseeing certain future problems, cases which could not, it seems, be solved favorably merely by an appeal to the principles of totality and double effect. These cases may require a reconsideration of the concept of direct sterilization, at least as it applies to women. This type of case is best illustrated

²⁹ "Physiologic Control of Fertility: Process and Morality," *American Ecclesiastical Review*, 138 (1958), 246-277 at 268, with note 45.

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by the dispute about suppression of ovulation during lactation.

A medical theory has been proposed that women do not normally ovulate for a period of several months while lactating. If they do ovulate during this period it is an anomaly. Therefore it would be permissible, according to some writers—others disagree—to use sterilizing drugs to suppress such ovulation; for everyone has a right to be normal.³⁰

Apparently some evidence for the theory has been presented, based perhaps in part on observations of primitive women. But the evidence does not seem to have impressed the medical profession, especially in this country. In fact, though we recognize that the medical judgment is reserved to the profession, we must confess that up to the present the evidence we have been able to see is not sufficient to provide a safe basis for the application of the theory in practice. Besides, the question seems somewhat academic for other reasons. The usable period of sterility thus obtained would probably be so short that it would afford little security and comfort to the couple concerned.

But what if in the future the medical evidence will show that ovulation during lactation really is an anomaly?—perhaps even a pathological one? Would it be permissible then to suppress it so that intercourse during that period would not result in conception? If so, it could hardly be on the theory that such procedure is only an indirect sterilization, but on the theory that it is not a forbidden sterilization at

³⁰ Cf., e.g., L. Janssens, *Ephemerides Theologicae Lovanienses*, 34 (1958), 359–60; John R. Connery, S.J., *Theological Studies*, 19 (1958) 550–51; Denis O'Callaghan, *Irish Theological Quarterly*, 27 (1960), 14–15, 333–339 and 28 (1961), 156–59; Joseph J. Farraher, S.J., *Theological Studies*, 21 (1960), 600–601, and 22 (1961), 627–30. Father Farraher's discussions contain many other references.

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all. In other words, the sterilization which is always forbidden as intrinsically evil would be to deprive a woman directly of *normal* fertility. In some of the writers already quoted there is more than a hint that they consider this to be the real meaning of that direct sterilization which is condemned as intrinsically wrong in ecclesiastical documents and theological teachings.

Other similar problems would be presented in the hypothesis that more than one ovulation during a given cycle is anomalous. Would it be permissible to use the drugs to suppress such ovulations in order to make the woman normally sterile and to make intercourse possible without danger of conception? Or suppose a physician wished to experiment with the regulation of ovulation within a given cycle. on the theory that, by using the steroids to prevent any premature or supernumerary ovulation from occurring in that cycle, he would allow regular ovulation to occur, or help it to occur, at a fixed time in the middle of the month.

Or again, it is said that identical twins result from an anomalous division of a fertilized ovum at an early stage; and that fraternal twins come from two ova, one of which is presumably supernumerary or anomalous. If drugs were discovered which would prevent these "anomalies" (statistically they are certainly anomalous) would it be permissible to use them, not to prevent conception altogether, but to prevent the conception of twins? This would be a case of reducing abnormal fertility, not of excluding fertility altogether.

Another possibility involves the deliberate attempt to reduce normal fertility by using a protein diet for this purpose.³¹

³¹ Cf. L. L. McReavy, "Protein Diet and Fertility," *Clergy Review*, 45 (1960), 482-84. A questioner suggests that a protein diet lowers fertility

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Finally there is the possibility, or the hope, or perhaps the dream—already expressed by many—that some new wonder drug will be discovered which can be used effectively, simply, and without harmful side effects, to bring about ovulation on a definite day in the middle of each 28 day cycle. It is not said how this last drug might accomplish its purpose, but presumably it, too, could involve the suppression of premature or extra ovulations.

It is not our purpose to present our opinions here on the practical solutions which would be given to these and similar cases when and if they become pressing enough to require solution. But we wish to discuss some of the underlying considerations which make it difficult, in the present state of our theological knowledge, to arrive at practical conclusions. We have seen that according to Catholic teaching the generative act and faculty have a specially inviolable character. Man's dominion over them is quite limited. But just what are these limits? How far does this stewardship allow him to go?

and asks Fr. McReavy whether it is permissible to take a protein in pill form in order to lessen one's fertility. Fr. McReavy leaves the judgment of fact to the experts. But, assuming that such a diet would lessen fertility, he thinks it would not be a direct sterilization because the key word in the definition of direct sterilization given by Pius XII is that it is designed to render procreation impossible. Fr. McReavy concludes:

"We must confess to ignorance as to how precisely the protein does produce its alleged effect, but if, as seems likely, it merely fosters a natural condition of the body in which the physiological processes conducive to fertility are less active, then far from conflicting with nature, it simply makes use of an observed tendency of nature. On this assumption, there is nothing intrinsically wrong in the action, just as there would be nothing intrinsically wrong, say, in going to live in a climate which had been observed to be less favorable to fertility.

"In particular cases, the motive might be questionable, but not generally. Many people nowadays have good grounds for wanting to be not more than moderately fertile, and, as long as they achieve their end, not by frustrating nature, but by cooperating with it, their action is both objectively and subjectively justified. We should stress, however, that this is a hypothetical answer to a hypothetical question. For anything more definite, one would need a more detailed brief from the biochemists."

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One answer given is that the individual's direct right over the reproductive function is limited to use or non-use and goes no farther. This apparently means that if he uses the function at all he must use it as it is and not positively interfere with it in any way. But further reflection indicates that this is not a principle of universal application universally admitted.

For instance, as regards tests for male fertility, one method which is considered probably licit is the use during marital intercourse of a condom so perforated that it allows some semen to be deposited in the vagina and also retains some semen for examination. And as regards "assisted" homologous artificial insemination, practically all theologians would consider licit the use of a cervical spoon; and many theologians would see no moral objection to the use of a syringe after marital intercourse to collect the semen deposited in the vagina and to place it further into the wife's genital tract.³²

³² For an outline of licit and illicit sterility tests and for a rather complete commentary on Pius XII's teaching on artificial insemination, see Chapters 26 and 27 of *Medico-Moral Problems* (St. Louis: The Catholic Hospital Association, 1958) by Gerald Kelly, S.J. Among those who favor the opinion that the use of a perforated condom, as well as removal of sperm from the vagina immediately after intercourse, even to promote fertility, is illicit is Francis J. Connell, C.S.S.R. But he acknowledges the practical probability of the other opinion and thinks that by analogy it has application to an interesting (though perhaps unrealistic) method of predetermining the sex of offspring. In a question submitted to Fr. Connell it is suggested that in the normal male ejaculate, some sperm would produce only a male, others only a female. The questioner wants to know whether, in the supposition that the male or female-producing sperm could be isolated, it would be licit to do so. Fr. Connell thinks that those who defend the licit use of a perforated condom and of removal of sperm from the vagina immediately after intercourse would logically have to allow this isolation of sex-determining sperm. On the more general question of sex determination, prescinding from method, he thinks that it cannot be said to be intrinsically immoral but that it might have very serious sociological consequences. (Cf. *American Ecclesiastical Review*, 143 [Nov., 1960], 345-47.) The point that interests us here is that this problem of interfering with the generative act, while leaving it substantially intact, would not even be debatable if the

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It might be suggested that theologians are more ready to approve seminal tests and assisted insemination because these procedures are for the promotion of fertility. But that does not change the fact that the methods mentioned do involve some control of, and even interference with, normal generative activity. Moreover, there are some cases, also legitimately debatable, in which the purpose is to reduce fertility or to avoid conception. One such case, as we have previously explained, is the use of *copula dimidiata*, with due safeguards and for proportionate reasons.³³ Another example might be the use of sexual depressants. Drugs are available that depress sexual desire. They prevent normal sexual stimuli from evoking normal sexual responses. They make orgasm difficult or even temporarily impossible. In a word, they may cause temporary impotence. Yet we think that many moralists would not consider the use of such drugs as intrinsically immoral, even if the direct purpose were to reduce sexual desire and sexual potency in order to accomplish legitimate family limitation. Nevertheless, the use of such drugs seems to involve some kind of control of or interference with the reproductive function.

Another type of case raises further speculation as to the extent of man's direct dominion over his reproductive powers. Hürth, Palazzini and Lambruschini have recently

principle of use or non-use were universally admitted. It is perhaps well to add that the question of predetermining sex differs essentially from the problem of attempting to change the sex of a human person who already, by reason of male or female gonads, belongs clearly and definitely to one or the other sex. See John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 20 (1959), 590-629 at 619-20; and John M. Madigan, S.J., *Intersexuality and Its Moral Aspects* (Rome: Gregorian University Dissertation [excerpts], 1956), p. 16. On the possibility of pre-determining sex by restricting intercourse to an early part of the menstrual cycle (for boys), or to a later part (for girls), see; I. E. George, *The Truth about Rhythm* (New York: Kenedy, 1962), pp. 98-101.

³³ E.g. M. Zalba, S.J., *Theologiae Moralis Compendium*, Vol. I (Madrid: B.A.C., 1958), n. 1540.

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defended the view that a single woman in danger of rape may take sterilizing drugs so that in case she is raped she will not conceive.³⁴ This is allowed by analogy with the case of the victim of rape who is permitted to take contraceptive measures after the event, and the prospective victim who is allowed by some to wear a contraceptive diaphragm when in fear of the event. The moralists who permit these cases (not all would agree, of course) are admitting that man has powers of direct disposal over his reproductive faculties in these special circumstances. According to some this is not a real exception to the law against contraception, because the reason behind that law, the true malice of contraception, lies in willing an act of intercourse and at the same time willing the frustration of the natural purpose of the act. The victims of rape do not will the intercourse; hence they are not forbidden to frustrate it when it is forced on them.³⁵

Several points can be noted here. First this reasoning would not be admitted by other authors (Merkelbach, for instance), who do not permit contraceptive measures even in case of rape. These authors put the malice of contraception in the positive interference with the physiological processes of reproduction. In fact to hold that contraception is involved only when such contradictory acts of the will are present, seems to be a comparatively recent refinement of the notion of forbidden contraception. Second, it is not universally true that to will an act deliberately and to will simultaneously its frustration is immoral. Moralists would allow scientific experimentation with the human nutritive

³⁴ P. Palazzini, F. Hürth, F. Lambruschini, "Una Donna Domanda Come Negarsi alla Violenza?" *Studi Cattolici*, 5, n. 27 (Nov.-Dec., 1961), 62-72. The three distinguished authors, using different argumentation, arrive at the same conclusion: the use of sterilizing drugs in the special circumstances of the case proposed is permissible.

³⁵ See Joseph J. Farraher, S.J., "Notes on Moral Theology," *Theological Studies*, 22 (Dec. 1961), 610-51 at 629.

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faculty even if it involved deliberate eating coupled with deliberate regurgitation. Third, if it is subsumed that the procreative faculty is different and subject to special limitations, we would reply: admittedly it is different, but the difference and the special limitations do not derive from anything contained in the general principle that deliberate frustration is immoral. And furthermore, in all the examples of legitimately debatable cases we have given here, the positive control or interference has to do precisely with the generative act or the generative faculty.

However, if the principles alleged above do not indicate with precision the limits of man's dominion over procreation, this should not lead us to think we have no certainty at all in the matter. Catholic teaching on contraception and direct sterilization is clear-cut and decisive for the vast majority of cases, even though the philosophical reasoning behind it leaves much to be desired.

Our teaching on the limits of man's powers has customarily been set down in the form of certain negative absolutes. To wit: it is never permitted under any circumstances to posit the marriage act and at the same time to frustrate it by positive means; and: direct sterilization of man or woman, whether permanent or temporary, is always intrinsically wrong. But although these formulations are clear-cut enough to solve the ordinary run of cases, and although they seem to demarcate accurately the limits of man's dominion, we discover that beneath their superficial clarity lurk problems and pitfalls.

For instance, with regard to the generative act: how is it defined in its minimum essentials? Even with the help of the practical definition used by the Holy Office,³⁶ there are

³⁶ Response of Holy Office, Feb. 27, 1941. Cf. Hartmann Batzill, O.S.B.,

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still unresolved questions which arise concerning impotence, cooperation with contraception, and the above-mentioned cases. Contraceptive acts are absolutely forbidden, but we are not always clear whether a given act is contraceptive.

With regard to the limits of dominion over the generative faculty the difficulties increase. The principle is formulated as an absolute negative. But sterility and fertility are relative terms.

A normally fertile man has, let us say, a sperm count of 6 x; an abnormally fertile man has 9 x; a less fertile, but still truly fertile man has 3 or 4 x; while a man with a count of 1 x (a mere 15,000,000 sperms) is simply sterile. In addition, some sperms are more vigorous than others; the same man is more fertile at one time than another, depending on his health; and a man's fertility normally decreases with age. A woman with only one ovary is not sterile, but she is less fertile than a woman with two. Some ova are more fertile than others. The fertility of the same woman varies at various times and with her age. A woman with a long cycle of ovulation-menstruation has more sterile days than a woman with a short cycle and is consequently more sterile than her neighbor. Finally the fertility or sterility of a man and wife is sometimes relative to one another. Both might be fertile with other partners but they are sterile with each other.

We are interested here in the problem of suppressing abnormal ovulations. This raises the question of temporary sterilization. Our principle, if taken at face value, forbids absolutely any direct inducing of temporary sterility in a woman. But does this principle take into account that women are temporarily sterile for the greater part of every

Decisiones Sanctae Sedis de usu et abusu matrimonii (Rome: Marietti, 2nd ed., 1943), p. 44-45.

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month anyway? This fact, now well established, played little part, it would seem, in arriving at the formulation of the principle. It is entirely legitimate, therefore, to raise the question whether the principle established in theological tradition and ecclesiastical teaching ever meant to condemn the reduction of fertility to normal limits or the suppression of abnormal ovulations. This would not be the first time a seemingly clear-cut formulation had to be re-evaluated in the light of new factual knowledge.

Fr. Connell's justification of the use of a progestational steroid to regularize the cycle takes this point of view into account. He says:

It is true, in a particular case the result of such treatment might be the reduction of the woman's fertility—namely, in the case of one whose cycle is providing fewer sterile days than is normal. If her menstrual cycle is properly regulated by this drug, it will mean that she will have more days on which (most likely) she cannot conceive. However, this would not be forbidden sterilization or contraception, since everyone has the right to use medical means that will help him or her to function normally. A similar case would occur if a woman had two wombs—a phenomenon that sometimes occurs. The excision of one would be *per se* a sterilizing operation, but it would be permissible, since it would simply produce a condition intended by nature.³⁷

Fr. O'Callaghan makes a similar point in his discussion of the lactation case with Dr. J. D. Acland:

The existence of a special hormonal mechanism that normally operates to inhibit ovulation during lactation is a suf-

³⁷ "The Contraceptive Pill," *American Ecclesiastical Review*, 137 (July, 1957), 50-51.

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ficient indication of nature's intention. Therefore, if the natural anovulatory mechanism fails to function in a particular instance, one may admit in principle direct hormonal inhibition to compensate for the deficiency. This measure certainly makes a woman sterile at a time when she would otherwise be fertile, but it does not make her sterile at a time when she should normally and naturally be fertile.

Direct sterilization is the direct suppression of the normal, natural capacity to have children. Inhibition of ovulation is not direct sterilization in those rare instances when it is not the suppression of normal, natural function. . . .

. . . If a female cycle is irregular in the sense that a woman ovulates at fortnightly intervals, it seems quite lawful to restore the normal monthly cycle by directly suppressing the excessive ovulations. The natural pattern demands a monthly interval between successive ovulations. Why, then, should there be any difficulty in admitting in principle inhibition of ovulation during the longer anovulatory interval which occurs during lactation? That, too, is part of the natural pattern of reproduction.³⁸

What these authors seem to say is that the suppression of abnormal ovulations, at least in some cases, is not the direct temporary sterilization which is forbidden by natural law. If it is lawful to take advantage of normal sterile periods to avoid conception, or reduce the chances of it, then why is it not within the limits of reasonable stewardship to take positive means to see to it that normal sterile periods exist?

This opinion is not excluded, as far as we can see, by any universally accepted moral principle which theologians now agree on as the ultimate reason why contraception is immoral. Until such a principle is found and acknowledged there will continue to be discussions of the morality of

³⁸ Cf. Fr. O'Callaghan's correspondence with Dr. Acland, *Irish Theological Quarterly*, 28 (1961), 156-159.

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borderline cases, and about the exact definition of that direct sterilization which is always forbidden.

Nor is the opinion excluded by any ecclesiastical documents that we know of. When Pius XI rejected mutilation in sweeping terms the possibility of organic transplantation was not being considered. Many theologians believe that his formulation of the doctrine does not necessarily include organic transplantation, despite its wording. Similarly, it would seem that the rejection of direct sterilization by the Holy Office in 1940 and by Pius XII at a later time, did not close a question which was not being considered at that time or in that context. On the contrary, it is not impossible to harmonize this interpretation with the words of Pius XII when he described direct sterilization as that which aims, either as a means or as an end, at rendering procreation impossible.³⁹ The woman who has a guaranteed monthly cycle has the ability to procreate that nature intends her to have; and a procedure which is designed precisely to give her such a cycle cannot, in the opinion of these writers, properly be called a sterilization, even though that procedure is also designed to suppress extra ovulation within a given cycle.

But since this opinion involves a development or a refinement of the definition of forbidden sterilization, it requires careful scrutiny. It should be considered in the light of certain objections which have been raised against it.

For instance, who can say just what is normal and what is abnormal in the fertility-sterility of women? Where would the new concept lead us? When we speak of abnormal fertility do we mean whatever is definitely abnormal statistically, or should we include only what is abnormal in the sense that it is truly pathological in the individual case? A

³⁹ Address to Midwives, AAS, 43 (1951), 835-854 at 843-44, Address to Hematologists, AAS, 50 (1958), 732-40 at 734-35.

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whole series of questions along these lines can be proposed.⁴⁰ To arrive at the answers to them means work for moralists and physicians alike. Such investigation is difficult. The answers have to be worked out gradually, with due respect for the guidance of ecclesiastical authority, which in similar matters has intervened in the past (after adequate theological discussion), to lay down some norm indicating limits in this or that direction beyond which it is illicit to go. Think for example of the debates about direct abortion at the turn of the century. But the difficulties of drawing lines and determining limits should not make us give up without trying; nor should we look to ecclesiastical authority for answers before the theologians have provided the materials on which the Church is accustomed to base her decisions.

It has also been objected that if we allow the principle that direct suppression of abnormal ovulation or fertility is permissible, then we would have to allow the complete elimination of ovulation and fertility in a woman beyond the normal time of the menopause.⁴¹ Would not everyone admit that ovulation is abnormal in a 60 year old woman—if the case ever occurred? Then what about the 55 year old? and the 50 year old?—and so forth. But this case is not parallel with the ones we have been discussing. As far as we are aware no author has defended any such procedure up to the present. It is one thing to regulate the ovulatory cycle and to correct abnormalities in it. It is quite another to eliminate the cycle altogether. It would not be necessarily inconsistent to hold that the one was a reasonable exercise of stewardship and dominion while the other was not. On

⁴⁰ See, for instance, Joseph J. Farraher, S.J., "Notes on Moral Theology," *Theological Studies*, 22 (Dec. 1961), 610–51 at 629–30.

⁴¹ Cf. Joseph J. Farraher, S.J., *ibid.*; John J. Lynch, S.J., "Notes on Moral Theology," *Theological Studies*, 23 (June, 1962), 233–65 at 247.

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the other hand, would it really be so outrageous and unthinkable to hold that ovulatory processes can eventually become a pathological abnormality, the elimination of which would not be forbidden sterilization? We do not hold this view. But in this whole field it is not impossible that during the next decade a deeper study of the natural law reasons against contraception, and of our principles on sterilization of women, will throw new light on the new problems.

Finally, it has been objected that once we allow suppression of abnormal ovulation we would logically have to allow a woman to use anovulants all the time except for three days in the middle of each month, when she would withdraw them to allow ovulation to occur. For it is normal for a woman to be sterile 25 days out of each 28. And if this were allowed we would logically have to permit her to use other contraceptives on all but the three days mentioned of each cycle.⁴² The objection overlooks two points: Firstly that before the new theory is reduced to practice, the question of what is normal and abnormal has to be clarified. The principle itself, even if accepted, would undoubtedly have to be restricted and made more precise. This process of refinement is not unusual as moral theology develops and new facts raise new problems. Secondly, the objection overlooks an important difference between interference with the generative act and interference with the generative faculty—a difference which we have always had difficulty in explaining.

The very concept of an act of sterilization (unlike the concept of the marriage act) seems to bear an immediate relation to its effectiveness in preventing conception. Conse-

⁴² Cf. Joseph J. Farnaher, S.J., *ibid.*

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quently, the previous absence of all possibility of conception in a given subject would make any act or operation on that subject meaningless as sterilizing. To remove ovaries from a woman who had previously undergone a hysterectomy, or to suppress ovulation in such a woman, does not seem to constitute an act of sterilization. To suppress ovulation temporarily in a woman who is already sterile for some other reason does not seem to constitute an act of temporary sterilization.

But the concept of an *actus per se aptus ad generationem*, that is, the very concept of the marriage act, does not bear the same immediate relation to its actual effectiveness as procreative. Even if the act is previously devoid of all physical capacity to result in conception, the use of some contraceptive techniques (e.g., the condom and *coitus interruptus*) would always be mortally sinful because they would mutilate the act as *per se* procreative, as a marriage act, even though the act was not going to be fruitful in any case.

What is the reason for this difference? Perhaps it depends basically on the arguments from reason which one adopts against the two kinds of contraception—mutilating the procreative act and mutilating the procreative faculty. But whatever the explanation, moralists would certainly not conclude from the lawfulness of using anovulants to maintain normal sterility to the lawfulness of using contraceptives in the marriage act during normally sterile times of the month.

Conclusion.

The question of the further refinement of the concept of forbidden sterilization is an open one and should remain so until there has been time for adequate theological discussion under the guidance of the Church. For our part we believe it is not impossible that some at least of the cases we

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have referred to as future problems will eventually receive a favorable solution. It is not impossible that a re-examination of the concept of direct temporary sterilization in women will lead theologians to admit that the direct suppression of abnormal fertility may sometimes be within the limits of man's stewardship.

Such a conclusion is attractive to some because it does not seem to involve any clear contradiction of the principles or the documents. There is also a certain common sense appeal in the proposition that a woman has a right to normal fertility-sterility and that to give it to her is not an unlawful usurpation of God's prerogative. Most of all it appeals to them because it might furnish the key to lawful, effective family planning. With the prospect in the not too distant future of not only detecting but of determining the exact time of ovulation, there would be grounds for hope, with Pius XII, that science will succeed in providing a sufficiently secure basis for the effective practice of periodic continence.

Although some points about the contraceptive pills remain theologically obscure, one thing at least remains clear and certain in practice from the authoritative teaching of Pius XII and from the unanimous teaching of theologians: *to use the pills as a means of contraception is gravely sinful, and Catholics who intend to use them thus must be refused absolution and are ineligible to receive the Holy Eucharist.* Furthermore—and this should be obvious without argumentation—if Catholics who intend to practice contraception are ineligible to receive the sacraments, then Catholics who advocate the practice of contraception, whether by means of the pill or by the older methods, are all the more ineligible to receive the sacraments. Richard Cardinal Cushing, Archbishop of Boston, made this clear in a statement he made public in the archdiocesan newspaper of Boston:

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The teachings of the Catholic Church on the question of contraceptive birth control are well known and universally applicable. Every method of contraception which interferes with the progress of marital activity towards its natural goal of conception is intrinsically wrong and in violation of natural law. The use of pills for the immediate purpose of impeding fertility, whether in the male or the female, represents likewise an unnatural interference with the natural tendency of reproductive activity. These principles are accepted by all theologians of the Catholic Church, and they must be the starting point of any discussion of secondary questions on the subject of population control about which there may be difference of opinion and possibility of deeper insight.

It is the moral obligation of individual Catholics, regardless of their professional competence, to accept the teachings of the Church in this matter, and to refrain from any public statement or expression of opinion which would imply rejection of, or contempt for, the authority of the Church which presents these teachings in their application to contemporary problems . . . Our attitude towards Catholics who declare themselves independent of the authority of the Church must be one of official condemnation. We leave to the judgment of God the question of their moral guilt. We point out to them that they must settle their personal problems of conscience in the tribunal of the Sacrament of Penance, and they cannot conscientiously receive the sacraments as practicing Catholics if they refuse to submit to the direction and guidance of ecclesiastical authority.⁴⁸

⁴⁸ *The Pilot*, 133 (June 30, 1962), 16. After the above chapter was in the hands of the publisher, John Rock, M.D., who resides in the archdiocese of Boston, published *The Time Has Come* (New York: Knopf, 1963.) Although Dr. Rock is widely publicized as a practicing Catholic, he advocates in this book the contraceptive use of the pill, and has previously advocated contraception on a wide scale by this as well as by all the more usual methods. See, for example, his editorial, "Population Growth," *Journal of the American Medical Association*, 177 (July 8, 1961), 58-60. Restricting ourselves merely to his advocacy of contraception, whether by means of the pill or by other methods, and to the reasoning he uses to support this position, we can state that Dr. Rock's opinions in

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We recognize the very severe hardships which fidelity to the moral law often imposes on Catholic couples nowadays; not rarely it takes heroism to live up to the demands of Catholic teaching. These difficulties, however, do not allow us to forsake principles which are solemnly taught by the Church; nor can we admit that the difficulties are insuperable for those who do what they are able to do themselves while wholeheartedly asking God to help them to do what is beyond their own unaided strength.

this matter have no standing whatever with Catholic theologians and directly contravene the authoritative teaching of the Catholic Church, which is binding on all Catholics. For reviews and comments on Dr. Rock's book, see: Joseph S. Duhamel, S.J., in *America*, 108 (April 27, 1963), 608-11; John J. Lynch, S.J., Paul F. Muller, M.D., William Webber, Raymond O. Foster, in *Marriage*, 45 (June, 1963), 14-26; editorial, *The Sign*, 42 (May, 1963), 33-34; Herbert Ratner in *Commonweal*, 73 (July 5, 1963), 392-95; Robert McAfee Brown, *ibid.*, 395-97; Richard Cardinal Cushing in *The Pilot*, 134 (Apr. 30, 1963), p. 16.

Periodic Continence: Theologians' Views before 1951

IT HAS BEEN scientifically established that women are normally fertile only on certain days of their menstrual cycle, and normally sterile on all the other days of the cycle. Furthermore, practical methods have been developed by which it can be predicted of many women with probability, or even with moral certainty, that definite days of the monthly cycle will be sterile for them. Periodic continence, or rhythm, is the *systematic practice of restricting intercourse to the sterile periods for the purpose of avoiding conception.*

The avoidance of conception by this method has altogether different moral implications from the practice of contraception. Contraception involves a substantial infringement of the physical integrity of the generative act, or of the generative powers, as such. It is always morally wrong because it violates a negative precept of natural law, which binds *semper et pro semper*. But periodic continence does

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not involve this invasion and infringement of human generative powers, and so the morality of the practice must be judged on other grounds. It must be judged with reference to the ends of marriage, the hierarchy of these ends, and in the total context of conjugal chastity and conjugal love.

So much has been written on this topic that it might appear superfluous to deal with it here again. However, consciences are *de facto* confused about the use of rhythm. Speculative opinions, held by various competent theologians, and based no doubt on careful theological reasoning, are proposed in press and pulpit as if they were binding on the consciences of the faithful. Because such opinions have been taken as practical norms, obligations under pain of sin, even of mortal sin, are sometimes unjustifiably imposed in the confessional. Marriage counsellors, physicians, and priests fail at times to distinguish between these theological opinions and the teaching of the Church. This has resulted in widespread confusion of consciences and consequent harm to souls.

It will not be superfluous, therefore, to recapitulate the Catholic teaching and the theological opinions in this matter. In the present chapter we will survey the theological state of the question prior to the Address of Pius XII to the Midwives, Oct. 29, 1951. The following chapter will explain and comment on Pius XII's teaching on periodic continence in that allocution. A third chapter, dealing with periodic continence today, will touch on some of the principal pastoral implications of that teaching. Our aim is to lay the foundation for a pastoral practice which does justice to the sanctity and meaning of marriage, to the moral teaching of the Church, and to the right of the faithful to know the difference between this teaching and the mere private opinions of theologians—ourselves included, of course.

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ST. AUGUSTINE'S TEACHING AND INFLUENCE

Among the Fathers of the Church St. Augustine is the only one we have found who explicitly speaks of the morality of periodic continence. He was disputing against the Manichaeans. According to their peculiar doctrine sexual intercourse was bad enough, but intercourse resulting in children was still worse, because bringing a child into the world meant harnessing a soul to a body of flesh; and the flesh, of course, was evil. St. Augustine upbraids them:

Are not you the ones who think that bearing children is a worse sin than intercourse itself, because souls are thus imprisoned in flesh? Aren't you the ones who used to warn us that as far as possible we should take note of the time when a woman, after menstruation, was capable of conception, and abstain from intercourse at that time, lest a soul be immersed in flesh? Whence it follows, that you are of the opinion that a wife is not for the procreation of children but for the satisfaction of lust. But marriage, as the very marriage laws proclaim, unites male and female for the sake of procreating children; therefore, whoever says it is a worse sin to have children than to have intercourse excludes marriage, and makes a woman not a wife but a harlot—one who, by reason of certain endowments which are hers, has connections with a man to satisfy his lust. For if she is a wife, it is matrimony. But it is not matrimony where means are employed that she may not be a mother; therefore, not a wife.¹

The Manichaeans were incorrect in their estimate as to which days were fertile and which sterile, but this error is immaterial in the discussion of the morality of the practice.

¹ *De moribus Manichaeorum* 2, 18, 65 (PL 32, 1373), and compare *Contra Faustum Manichaeum* 15, 7 (PL 42, 310). In the last sentence Augustine plays on the words *matrimonium-mater*: "Non autem matrimonium est ubi datur opera ne sit mater. . . ."

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The severity of the terms in which St. Augustine condemned periodic continence as practiced by the Manichaeans is a strong reason for believing that he considered it not merely sinful, but gravely sinful. And at least as far as permanent, or systematic avoidance of conception is concerned, there is little doubt that he would have considered it a gravely sinful practice for Christians, as excluding from marriage the principal thing that makes marriage marriage.

But it would be a mistake to think that today, in this matter, we can find practical norms for the faithful in the works of St. Augustine, or even in the works of the great scholastics of the classical period. If we were to follow St. Augustine's views on the ethics of conjugal intimacy, we would have to tell married couples that intercourse during pregnancy is at least venially sinful; that to use marriage after the menopause or in old age is venially sinful; that to use marriage in order to flee temptation and avoid fornication (in other words to use it as a remedy for concupiscence when procreation is impossible) is at least venially sinful. That is what Augustine taught. And he was followed by the writers of the widely used Penitentials of pre-medieval times, and by the great scholastics of the middle ages.²

These theological opinions of another and faraway age sound strange to the ears of a modern moralist, but they are consistent with Augustine's conception of concupiscence and its relation to procreation. Since he considered sexual concupiscence to be an evil, almost evil in itself, the deliberate use of this "evil" thing in marriage was justified only because it was a necessary means to the *bonum proles*.

² John F. McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York, 1938), p. 95 and *passim*; John J. Clifford, S.J., "The Ethics of Conjugal Intimacy according to St. Albert the Great," *Theological Studies*, 3 (1942), 1 ff.; St. Thomas, *Suppl.*, q. 49, a. 5, corp., etc. See above Chapter 9, notes 16-31.

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To Augustine, and to many theologians who followed him for centuries after, procreation was not merely the primary end of the use of marriage; it seemed to be the only entirely blameless end. Nothing could have been more foreign to his thought than the rhapsodies of some modern writers about the marriage act, with or without the possibility of progeny, as a personal fulfillment and valuable enrichment of the spouses. Augustine taught not only the essential subordination of the remedy for concupiscence to the procreation of children, but he explained this subordination as one of means to end. The use of concupiscence was entirely without sin only because and only when it was used as a means to begetting children for everlasting life. As we have already seen in a previous chapter, St. Augustine's view of the subordination of the ends of marriage can no longer be maintained.³ It must be confessed, too, that much of Augustine's teaching on and evaluation of concupiscence is no longer accepted by dogmatic theologians. Moralists, following suit, unanimously reject some of his practical applications of that doctrine to the use of marriage. A reference to this gradual historical development has been in some sense necessary in order to put our present discussion in its proper setting. The modern differences of opinion among moralists about the safe period become more understandable when explained in the light of this theological background.

THE NINETEENTH AND EARLY TWENTIETH CENTURIES

The modern discussion of the morality of periodic continence went on for about one hundred years prior to the papal Address to the Midwives in 1951. Although there was undoubtedly some previous consideration given to the

³ For an explanation of this essential subordination in keeping with today's theological suppositions, see Chapter 7.

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topic (and physicians had guessed much earlier that a sterile period existed) we may take as a convenient point to mark the beginning of the modern development an answer of the Sacred Penitentiary given in 1853 to a question submitted by the Bishop of Amiens. The Bishop had asked whether married persons who restricted their intercourse to the days of the month then considered sterile were to be disturbed, at least if they had legitimate reasons for abstaining from the marriage act. The Sacred Penitentiary replied that such persons were not to be disturbed provided they were doing nothing to impede conception.⁴

In 1867 Thomas Cardinal Gousset expressed the view that the marriage act performed (knowingly) during a sterile period was not wrong in itself.⁵ In 1873, with the publication of LeComte's work on the implication for theology of new physiological theories of ovulation, a more complete discussion of the problem took place; a discussion which dealt with many of the essential points which were to engage the minds and pens of moralists in our own times.⁶

LeComte agreed substantially with Gousset, and apparently the majority of those who expressed their opinions at that time were in the same camp. There were dissenting voices, however, from those, who, directing their attention more to the systematic choice of sterile periods, considered it a sinful, positive exclusion of the primary end of marriage.⁷ Because of these contrasting views LeComte sub-

⁴ Hartmann Batzill, O.S.B., *Decisiones Sanctae Sedis de usu et abusu matrimonii* (2nd ed.; Rome, 1943), p. 20.

⁵ N. Orville Giese, *The "Rhythm" in Marriage and Christian Morality* (Westminster, Md., 1944), pp. 18-19.

⁶ A. LeComte, *De l'ovulation spontanée de l'espèce humaine dans ses rapports avec la théologie morale* (Paris and Louvain, 1873). Giese, *op. cit.*, p. 18, n. 1, says: "the biological calculations in this book are based on the erroneous Pflüger Theory."

⁷ Giese, *op. cit.*, pp. 18 ff.

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mitted a series of questions to the Sacred Penitentiary concerning the practice of periodic continence:

1. Could married people behave in this way without sin, either mortal or venial?

2. Could a confessor advise this way of acting either to a wife who detests her husband's onanism but is unable to correct it; or to either spouse, anxious to avoid numerous children?

3. Must one avoid the danger of decreasing the offspring, or should that danger be considered secondary to the advantage to be derived from the avoidance of sins and from peace of consciences?

In 1880, the Sacred Penitentiary in a private response gave a partial reply to these questions, avoiding in the reply itself any explicit judgment on the morality of the practice. The reply was as follows:

Spouses who use marriage in the aforesaid manner are not to be disturbed, and a confessor can insinuate, cautiously however, the opinion in question to those spouses whom he has tried without success to dissuade from the detestable crime of onanism.⁸

In 1890 the seventh Latin edition of Capellmann's work on pastoral medicine was published, and in 1901 Eschbach's *Disputationes Physiologico-Theologicae*.⁹ Both these authors were much respected and frequently quoted by the writers of the moral manuals because of their medical and physiological information. Both of them recognized the existence of a sterile period, but unfortunately the period of

⁸ Batzill, *op. cit.*, pp. 24-26.

⁹ C. Capellmann, *Medicina pastoralis* (7th ed., Aachen, 1890); A. Eschbach, *Disputationes Physiologico-Theologicae* (Rome, 1901).

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the month they indicated as sterile has since been discovered to be the very time when for many women conception is most likely to take place. For 40 years, from 1890 to 1930, moral manuals were indicating the middle of the menstrual cycle as the time when conception was least probable. There must have been many disappointments among those to whom confessors "cautiously insinuated" the use of this period, and it is not surprising that up until the time of the discoveries of Knaus (1929) and Ogino (1930) the public had little confidence in the effectiveness of periodic continence.

This may well explain also why there was relatively little theological controversy about the practice during the first three decades of the 1900s. Many manuals treated the topic. In fact among the manualists there was great unanimity in the practical conclusion that the systematic practice of periodic continence for the precise purpose of avoiding conception was objectively licit, provided the partners had legitimate reasons for this practice. But since it was not a practically effective or widely used method, there was not sufficient interest in it to motivate profounder studies.

FROM CASTI CONNUBII (1930) TO THE ADDRESS TO THE MIDWIVES (1951)

After the publication of *Casti Connubii* at the end of 1930, with its permissive reference to the use of the sterile periods, the problems of periodic continence began again to be discussed in earnest by theologians. For at about that same time the discoveries of Ogino and Knaus became generally known, and it became apparent that there really was scientific basis for asserting the existence of sterile periods. The work of Ogino and Knaus (who arrived separately at

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substantially the same conclusions) was popularized in this country by the writings of Dr. Leo J. Latz. His book, *The Rhythm of Sterility and Fertility in Women*, first published in 1932, was circulated to the general public and gave wide currency to the term “rhythm” to describe periodic continence.¹⁰

In the encyclical *Casti Connubii* the following passage had occurred:

Holy Church is also very well aware that not infrequently one of the spouses is more sinned against than sinning when, for an altogether serious reason, he or she permits the perversion of right order, and that such a one is without fault provided he or she recalls even then the law of charity and does not neglect to prevent and dissuade the other from sinning. Nor are those married couples to be considered as acting against the order of nature who make use of their right in the proper, natural way, even though, through natural causes either of time or of certain defects, new life cannot thence result. For both in matrimony itself and in the use of the conjugal right there are secondary ends, such as mutual help, the fostering of mutual love, and the quieting of concupiscence, which the spouses are by no means forbidden to intend, provided always the intrinsic nature of that act is preserved, and accordingly its proper relation to the primary end.¹¹

The fact that the licit use of the sterile period was already at that time a commonplace among theologians, the fact that the phrase “through natural reasons . . . of time” was used, rather than “reasons of age” or some similar expression, and the fact that the immediate context of the en-

¹⁰ Leo J. Latz, *The Rhythm of Sterility and Fertility in Women* (Chicago, 1932).

¹¹ *Casti Connubii*, AAS, 22 (1930), 561.

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cyclical itself was concern for the difficulties of married people tempted to onanism—all these considerations convinced the great majority of theologians that Pius XI was here referring to the permissible use of the sterile periods as a means of avoiding conception. Pius XII, we may mention here, explicitly confirmed this view in 1958, thus dispelling what little doubt had existed on this point.¹²

But though the quoted passage of *Casti Connubii* ratified the position that use of the sterile periods was not contrary to nature, it did not say anything explicitly about the systematic use to avoid conception, or about the circumstances and conditions under which this systematic avoidance could be permissible. During the two decades 1931 to 1951 an immense amount of literature on this topic appeared in Catholic publications, both scholarly and popular. So many points were debated and so much disagreement expressed, that many of the laity, not to mention the clergy, were confused. Some lost sight of the fact that underlying this diversity of opinion there was always general agreement on certain important, practical, moral conclusions concerning the use of periodic continence.

Moralists were agreed that it was permissible to practice periodic continence systematically, that is, with the direct intention of avoiding conception for considerable periods of time: (1) provided that both parties were willing to do so (this meant that they were mutually agreed, that neither party forced the practice on the other); (2) provided that both parties were able to do so (this meant that the practice did not involve either one in the unjustifiable occasion of sin, for instance solitary sin, or other sins against chastity, etc., and did not expose the marriage to other unjusti-

¹² Address to Hematologists, 12 Sept. 1958, AAS, 50 (1958), 736.

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fiable dangers); (3) provided that there existed a legitimate reason for avoiding conception.

The theologians were in agreement further that a violation of either of the first two conditions was *per se* mortally sinful. There was a debate about the gravity of the third condition. A small minority held that to practice periodic continence, at least for a long time, without a legitimate reason, was mortally sinful. But there was no justification for allowing a confessor to impose this view on penitents, when the opposite view, that it was only a venial sin, was so obviously probable and so much more widely held. Consequently, for confessional practice, there should have been common agreement on this point: that the third condition could not be imposed on penitents *sub gravi*. Departures from this norm which may have occurred can hardly be squared with sound theological principles, universally admitted, on the proper use of probabilism.

As far as our reading indicates there were few if any moral theologians during the entire 100 years, i.e. the entire period in modern times during which this matter has been discussed, who would deny the practical probability (to say the least) of the doctrine that periodic continence was licit under these three conditions. Furthermore, just as this was the common practical teaching in the matter before the Address to the Midwives, it remains so after that important document. It seems worth while to call attention to this continuing agreement of theologians on these fundamental practical points, because otherwise one might get the impression that until the Pope spoke in 1951 the whole question was in dispute, and that there was no practical unanimity at all at the practical level as to the guidance which should have been given to the faithful in the confessional.

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On the other hand, between 1931 and 1951 many points of disagreement, especially at the speculative level, were discussed, and there were many questions to which no definitive answers could be given by moralists. For instance: Do individual couples have an *affirmative obligation* to procreate? Why is a legitimate excusing cause required? Is it a mortal or a venial sin to practice rhythm without an excusing cause? And the cognate question: *How serious* an excusing cause is required? *What virtue* is violated in practicing the rhythm without legitimate reasons? Finally, there was controversy at the prudential level about *publicizing* periodic continence as a lawful method of family limitation.

As for the obligation to procreate, the great majority of theologians prior to 1951 did not teach an explicit, affirmative obligation on the individual couple to have children. Apart from the obligation of intercourse, which the parties owed to one another in virtue of the marriage contract (1 Cor. 5, 7), and which would normally result in children, they were not generally considered to have a special, additional obligation to conserve or propagate the race. This view seemed to be in entire accord with the passage of *Casti Connubii* just quoted.

In this passage Pius XI seemed to be saying that married couples who use the conjugal act for its secondary purposes and who preserve the physical integrity of the act need no further justification for their conduct. He asserted no duty to procreate. And in another section of the encyclical he studiously avoided such an assertion, when he said: "Indeed, a most wise God would have made little provision for the offspring begotten and thus for the whole human race, unless those to whom he had granted the power and right to procreate, he had also endowed with the right and duty to

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educate." The duty of educating was clearly enunciated: the duty of procreating was left unmentioned.

Other documents of the Church prior to and including the period we are discussing were likewise silent as to an affirmative obligation on individual couples to procreate. Neither Leo XIII (Feb. 10, 1880), on whom *Casti Conubii* leans heavily, nor the decision of the Rota (coram Wynen, Jan. 22, 1944), nor the decree of the Holy Office (Apr. 1, 1944) on the subordination of the ends of marriage, makes any mention of such an obligation, though all these documents are intent on establishing the procreation and rearing of children as the primary end of marriage.¹³

It was not at all surprising, therefore, that Father Francis Hürth, S.J., then professor of moral theology at the Jesuit scholasticate at Valkenburg, Holland, in an article published within the first year after the issuing of the encyclical, expressed the view that there can be no moral objection *ratione sui* to the habitual practice of periodic continence because the sexual acts placed during the sterile times are natural acts, and because abstinence during fertile times violated no obligation, since neither the married state itself nor the use of marriage imposes on individual couples the duty of preserving the race.¹⁴ This was also the view of Fr. Arthur Vermeersch, S.J., then professor of moral theology at the Gregorian University in Rome. In fact, Fr. Vermeersch expressed surprise that among well-intentioned Anglicans there were several authorities of the opinion that the vocation to married life imposes on the parties the duty

¹³ Leo XIII, *Arcanum divinae sapientiae*, 10 Feb. 1880; *Sententia S. R. Rotae*, 22 Jan. 1944, coram Wynen, in *Decisiones S. R. Rotae* 36, Decis. 6 (published also in *AAS*, 36 (1944), 179-200); Decree of Holy Office, 1 April 1944, *AAS*, 36 (1944), 103.

¹⁴ F. Hürth, S.J., "De sterilitate physiologica," *Nouvelle revue théologique* 58 (1931) 674-89.

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to give children to their country and to the Church if they can.¹⁵

Perhaps one reason for this staunch defending of the view that a duty to conserve the race does not fall upon individuals was the historical position in the Church that the practice of perfect continence, even in marriage, if done for a supernatural motive and by mutual consent, is not only legitimate but praiseworthy.

Nevertheless, at the speculative level there were dissenting voices from the more common opinion, and probably a growing number of them. One of the present writers, a year or two before the Address to the Midwives, gave it as his opinion that "the very nature of the married state demands that married people do what they reasonably can to have a family."¹⁶ And he suggested that "this view needs further consideration by theologians." Others spoke similarly. But as far as we have been able to judge from the literature, the majority of theologians before 1951 taught that there was *per se* no affirmative obligation on the individual couple to procreate. Consequently, at the practical level it was improper to impose this obligation on the faithful.

But if there was no affirmative obligation to procreate, why did the theologians require so unanimously a legitimating reason for the practice of periodic continence? The position of the minority was clear and logical. Since they held an affirmative obligation to procreate, they demanded justifying causes as an excuse from this obligation. But the position of the majority was equivocal. For they held, first, that there was *per se* no obligation to procreate; secondly, that

¹⁵ A. Vermeersch, S.J., *What Is Marriage?* translated by T. L. Bouscaren, S.J., (New York: The American Press, 1932), q. 98.

¹⁶ Gerald Kelly, S.J., "Notes on Moral Theology, 1949," *Theological Studies*, 11 (1950), 74.

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the use of marriage for its secondary ends was *per se* permissible even when conception was impossible, and yet, thirdly, demanded an excusing cause for the systematic use of the sterile period. Why?

A frequent explanation was that the use of the safe period without a justifying cause was a sin of selfishness, which manifests itself in such purposes as these: inordinate love of pleasure, inordinate love of wealth, shunning of the effort required to rear a family, and the desire to escape the ordinary pains of childbirth. In other words because of selfish motives the practice becomes sinful *ex fine operantis*. But it was nowhere shown that the desire to gain wealth, or avoid pain, or escape the labor involved in raising a family are in themselves sinful. It is true that selfishness easily leads to sin, for it is an inordinate tendency deep-seated in all of us. But it is not actually sinful unless it leads to the violation of obligations that bind under pain of sin. And this brings us back to the question: are married people obliged to have children?—a question already answered in the negative by these theologians.

This weakness seems typical of much that was said about periodic continence by moralists, professional and non-professional, clerical and lay. Again and again we heard that even though rhythm is perfectly sinless on the part of object and circumstances, yet one commits the sin of selfishness in practicing it without proportionate reason. Latent in all this seems to be the assumption that there is no distinction between precept and counsel, and that the inordination vaguely referred to as selfishness admits of no division into sin and imperfection. Perhaps the real explanation of this insistence on the sin of selfishness lies in the fact that the necessity of emphasizing the obligations of married people has led some

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to forget that in marriage, as in other states of life, there are both ideals and duties, counsels and precepts.

Similarly, it was not logical to appeal to the Catholic "ideal of fertility" as the basis for requiring excusing causes under pain of sin. For this ideal was admittedly not obligatory under pain of sin.

Fr. Griese's position as to the reason why justifying causes are required (he considered the practice *per se* illicit without them) was still more ambiguous. He says explicitly that "there is no law which states that married people must have children"; yet on the other hand, he contends that they do have an obligation to keep the primary end first in their intention.¹⁷ These statements do not seem compatible.

The more logical position for all these authors would have been this: if there is *per se* no obligation to have children, then *per se* no excusing cause at all is required for avoiding children by rhythm, supposing always, as all these authors did, that the secondary ends are legitimate purposes of intercourse even when "through natural causes either of time or of certain defects, new life cannot thence result." And thus one would be forced to conclude that it is not *per se* sinful, not even venially sinful, to practice rhythm without any justifying cause.

However, even one who held this logical position speculatively, could admit with the common opinion that in practice some justifying cause is required, at least *sub levi*. It is required *per accidens*, for instance because of the dangers which are so commonly present when married couples practice rhythm without having special justifying reasons. For instance, Fr. J. Goeyvaerts puts the whole emphasis on danger. The choice of the system, he explained, is not wrong

¹⁷ N. Orville Griese, "Objective Morality of the Rhythm Practice," *American Ecclesiastical Review*, 120 (1949), 475-79; cf. Kelly, art. cit., p. 76.

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ex objecto, but the attempt to practice rhythm is open to many dangers and is therefore justifiable only for reasons proportionate to these dangers. As a practice extending over the whole, or almost the whole, of married life, it creates such serious dangers that without a very weighty reason it seems to be forbidden *sub gravi*.¹⁸

This leads us to the further dispute about the gravity of the sin of practicing rhythm without a sufficient cause, and the cognate question as to how serious a cause was required to justify it. The minority view, represented above by Goeyvaerts, and also by Griese, Salsmans and a few others, held that it was mortally sinful (for one reason or another) to practice rhythm without a justifying reason, at least for a long time.¹⁹ Consequently they demanded really serious reasons to justify it. Those who held it was at most venially sinful, naturally required less weighty justifying causes. But there was a very wide variety of opinions as to what causes were serious enough to justify the practice, and this led to great confusion in the minds of confessors, physicians, and the married laity themselves.

Another problem was a more theoretical one. What moral species of sin is committed, what virtue is violated, when rhythm is practiced unjustifiably? The answers given to this question varied, of course, with the theological presuppositions of the various authors. Those who held there was an obligation to procreate spoke of an obligation of legal justice to the human race. Some spoke, rather inaccurately, as we have seen, of a sin of selfishness. Others, if they had discussed the matter, would undoubtedly have

¹⁸ J. Goeyvaerts, "De moralitate usus matrimonii ad tempus ageneseos restricti," *Collectanea Mechliniensia*, 33 (1948), 701-5; cf. Kelly, *art. cit.*, pp. 74, 76.

¹⁹ Griese, *op. cit.*, pp. 53-54.

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spoken in terms of the particular kind of danger to which the practice exposed those who used it unjustifiably. In general the treatment of this question was sketchy and left much to be desired.

Finally, there was much disagreement as to the prudence of publicizing the Ogino-Knaus method. There were undoubted abuses in this regard, which made some ecclesiastics and physicians seem to be "counselors of infertility," to use Vermeersch's expression. Then too, the moral difference between natural birth control and contraception was not easily grasped by the masses, and there was always the danger that if the former failed to work, they would see no reason why they might not resort to the latter. But on the question of publicity as on the question of the gravity of the sin, and the gravity of the reasons required, each theologian's attitude, favorable or unfavorable, to the method itself, played a large part in determining the answers given. And one cannot escape the suspicion that even at this late date St. Augustine's definitely derogatory evaluation of sexual pleasure may still have been exerting some vague and unrecognized influence on the minds and opinions of some theologians.

These were the questions which were still being discussed when Pius XII delivered the memorable Address to the Midwives on Oct. 29, 1951. In the following chapter we will discuss these questions in the light of the Papal teaching in that allocution.

Pius XII on Periodic Continence

POPE PIUS XII's teaching on periodic continence is given in the third part of his Address to the Midwives.¹ The pope begins this section by exhorting the midwives to try to inspire married women with an appreciative love of motherhood. But, since many women might want to avoid childbirth and might seek the advice of midwives for this purpose, the pope points out to the midwives their duty to know the teaching of the Church on the moral aspects of family limitation. He briefly recalls his predecessor's and his own official pronouncements against contraceptive practices and direct sterilization, enlarging somewhat on the latter point. He then takes up the problem of the use of marriage during the woman's sterile periods, and particularly the question of periodic continence.

As regards the medical aspects of the female cycle he tells

¹ Oct. 29, 1951, AAS, (1951), 835-54, at 844-46. The "midwives" would more properly be called obstetrical nurses in our usage. See also allocation of Pius XII to the "Family Front" and Association of Large Families, 26 Nov. 1951, AAS, 43 (1951), 855-60, at 859; and Address to Hematologists, 12 Sept. 1958, AAS, 50 (1958), 732-40, at 736-37.

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the midwives that they should have accurate and up-to-date knowledge derived from competent professional sources, and they should be prepared to explain these things to others either verbally or by means of serious publications.

He did not discuss, in so many words, the prudence of publicizing periodic continence as a lawful method of family limitation. But the fact that he himself was discussing it publicly, in the vernacular, to a group of laywomen, and later returned to the topic before a non-professional audience of both men and women, with world-wide newspaper publicity given to both these addresses, is a sufficient indication that he considered it prudent and desirable that the general public be instructed about periodic continence. Prudence obviously requires that this instruction of the public be accurate, serious and adapted to the capacities of the audience, in order to avoid misunderstandings and abuses. But the "cautious insinuation" of the safe period, which was the prudent course suggested to confessors by the Sacred Penitentiary one hundred years ago, can no longer be considered the only norm of prudent procedure today. Pre-marital and marital instructions are incomplete today without clear instructions on the morality of periodic continence.

On the juridical side, the pope poses the question familiar to canonists: Is a marriage valid if the parties contract it with the intention of limiting intercourse to the sterile periods? And his answer is given with the distinction also familiar to canonists. The marriage would be invalid if the parties intended to restrict the marriage right, not merely its use, to these periods, because this would mean that they are not giving the perpetual right which is essential to marriage. We conclude that Pius XII must have been speaking only of an exclusion of the fundamental mar-

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riage right, because the exclusion of the proximate right would not necessarily be incompatible with valid consent. At all events, nobody should be encouraged to believe that it would be easy to obtain an annulment of a marriage on the grounds that it was contracted with an intention or even an agreement to practice periodic continence. The arguments tending to show that such an intention or agreement was not meant to restrict the right itself would be so strong in practice that only the most extraordinary circumstances would provide enough proof to overcome them.² If the parties merely intended to restrict their use of the marriage act to the sterile periods, the marriage would be valid, said Pius; but there would still be the problem of the lawfulness of such an intention.

The Pontiff had already explained that there is no moral problem in the use of marriage during sterile periods when the use is not limited to these periods, in other words when these periods are also used:

If the actuation of this theory means nothing else but that the spouses can make use of their matrimonial right also on the days of natural sterility, there is nothing against it: thereby, in fact, they do not impede or prejudice in any way the consummation of the natural act and its further natural consequences. It is precisely in this that the application of the theory of which we are speaking is essentially distinguished from the abuse already indicated which consists in the perversion of the act itself.³

He now says that the problem is not so simple in the case

² *Supra*, Chapter 4, p. 58 f. See N. Orville Griese, *The Marriage Contract and the Procreation of Offspring* (Washington, D.C., 1946), pp. 60 ff., esp. pp. 64, 65, for discussion and authorities.

³ Address to Midwives, *op. cit.*, pp. 844-45.

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of those who restrict intercourse to the sterile periods only. It is not sufficient for them to place the act in a natural manner, with the willingness to accept parenthood should conception take place. Over and above this, they need justifying reasons for using this method of family limitation.

Why are justifying reasons needed? In answering this question, the Holy Father contributes significantly to the development of the theology of periodic continence; hence we wish to quote him completely and as literally and accurately as possible. He says:

The reason is that matrimony obliges to a state of life which, while carrying with it certain rights, also imposes the fulfillment of a positive work concerning the state of life itself. In such a case one can apply the general principle that a positive prestation⁴ can be omitted if grave motives, independent of the good will of those who are obliged to it show that this prestation is not opportune or prove that it cannot be justly demanded by the claimant—in this case the human race.

The matrimonial contract, which confers upon the spouses the right to satisfy the inclination of nature, constitutes them in a state of life, the state of matrimony. Now on partners who make use of matrimony by the specific act of their state nature and the Creator impose the function of providing for the con-

⁴In the interest of accuracy we have translated the technical Italian legal word "prestazione" by the corresponding technical English word "prestation," which is defined by the *Oxford Universal English Dictionary* thus: "The action of paying, in money or services, what is due by law or custom, or feudally; a payment or the performance of a service so imposed or exacted; also the performance of something promised." Although this is an unfamiliar word today even in legal language, it is an exact translation of the word used by Pius XII. It was the only accurate word we could find to convey the legal flavor and the technical legal meaning of the Italian used by the Pope. Even though his use of this language in this context may be analogical or partly metaphorical, it does provide grounds for interpreting the obligation he is speaking of in terms of legal justice. Cf. Stanislas de Lestapis, *Family Planning and Modern Problems* (New York, 1961), p. 133, n. 7.

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servation of the human race. This is the characteristic prestation from which their state of life derives its peculiar value, the *bonum prolis*. The individual and society, the people and the state, the Church itself, depend for their existence, in the order established by God, on fertile marriage. Consequently, to embrace the state of matrimony, to use continually the faculty proper to it, and in it alone, and on the other hand to withdraw always and deliberately without a grave motive, from its primary duty, would be to sin against the very meaning of conjugal life.

Serious motives, such as those which are frequently present in the so-called "indications"—medical, eugenic, economic, and social—can exempt from this positive, obligatory prestation for a long time, even for the entire duration of the marriage. Hence it follows that the observing of the sterile periods can be *licit* from the moral viewpoint; and under the conditions mentioned it is really so. If, however, there do not exist, according to a reasonable and equitable judgment, grave reasons of this kind, either personal, or deriving from external circumstances, the will to avoid deliberately the fertility of their union while at the same time continuing to satisfy fully their sensuality, cannot but derive from a false appreciation of life and from motives foreign to right ethical norms.⁵

In these paragraphs two points are highlighted: (1) there is a duty to procreate; and (2) being an affirmative obligation, it admits of excusing causes. Further treatment of the excusing causes will be given in our next chapter. In the present chapter we wish to consider some special questions raised by the papal teaching on the duty to procreate.

This teaching was the cause of some surprise and has been the source of much theological discussion. It was surprising, not so much for its content—because, as we shall see, the existence of such a duty seems eminently reason-

⁵ Address to Midwives, *op. cit.*, 845-46.

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able—as for the circumstances of the statement. As far as we have been able to discover it was the first official document to enunciate this duty. *Casti Connubii* and other important Roman documents had said nothing about such a duty.⁶ The statement was made at a time when the majority of theologians were teaching that individual couples do not have a duty to procreate, and at a time when no such duty seemed necessary to provide for the conservation of the race; in fact, at a time when many demographers were in fear of overpopulation. And though from the viewpoint of theology it was a most significant development, the statement was made, not in an encyclical letter or some similarly imposing document, but in an address given in the vernacular to a group of laywomen.

Furthermore, it was introduced into this discourse only in *obliquo* and indirectly, in order to explain why excusing causes are required to justify the systematic practice of periodic continence. Perhaps this is a reason why some authors, writing after the publication of this allocution, continued to speak as if there were no affirmative obligation on individual couples to procreate. Possibly they felt that since this doctrine was introduced here as an explanation of

⁶ See above, Chapter 17, note 13. The previous official silence on a duty to procreate may be easier to understand and partially explained if we recall the following points. The Church has traditionally approved of a mutual agreement to practise perfect continence in marriage for supernatural reasons. There was, accordingly, no need of asserting an obligation to procreate as regards the exceptional couples who practised perfect continence, because they were excused from it or were outside the ambit of the obligation altogether. There was no need of asserting it as regards couples using marriage regularly without regard for or knowledge of the sterile periods, because they were fulfilling it. And there was no practical need in the past of asserting it as regards couples practising periodic continence, because they were relatively few, and because this was not known as an effective method of avoiding conception until our own day. According to F. Hürth, *De re matrimoniali* (Rome, 1955), p. 112, n. 23, the Address to the Midwives is the first pontifical document to enunciate an affirmative duty to procreate.

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the moral teaching on the use of rhythm, to give reasons for the central moral teaching enunciated, it is less authoritative than that central teaching. We take that central teaching to be that the systematic practice of periodic continence can be legitimate, but only when justified by proportionate excusing causes. Sometimes, in ecclesiastical documents, the reasons given for a doctrine do not enjoy the same degree of authority as the doctrine itself.

Because of these various circumstances, the papal teaching on the duty to procreate came as a surprise to many. But surprising or not, and prescinding from the degree of solemnity or authority which attaches to it, it is now the accepted theological position, and has become the object of much discussion. For the most part, this discussion has revolved around four points: (1) whether the basis for the duty is the married state itself or only the use of marriage; (2) what virtue or virtues inculcate the obligation; (3) whether the duty is limited only by excusing causes, or is fulfilled when a certain number of children is reached; and (4) whether it is a grave obligation, binding upon individual couples under pain of mortal sin. The remainder of this chapter will be devoted to a discussion of these four points.

(1) THE BASIS OF THE OBLIGATION

The first question is whether this obligation is derived directly from marriage itself, i.e., from the state of marriage, or rather from the use of marriage by those in the married state. It cannot be denied that on a first reading of the allocution one is likely to conclude that the obligation is directly derived from and dependent upon the actual use of marriage. We believe, however, that the text of the document does not preclude further discussion of this view, and

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because of the difficulties encountered in explaining it we wish to offer tentatively to the consideration of our theological colleagues some reasons for thinking the obligation may derive directly from the state of marriage.

Pius XII asserts that those married couples who *de facto* use their right habitually and completely are obliged to contribute to the conservation of the race. But he does not assert that they have this obligation precisely because they make use of their right. Nor does he assert anywhere that those who do not use their right do not have this obligation. Is it not possible that the meaning of the document may be: "At least those who use their rights habitually and completely etc." have this obligation? Such an interpretation should not be offered gratuitously. But we think there is good reason for believing that this may be the true explanation of the obligation asserted in the text.

It must be remembered that the moral question which the Pontiff proposes to answer directly and *ex professo* at this point is not the question as to which married couples have such an obligation. The moral question which has, as it were, been proposed to him for his solution is that of the moral lawfulness of the systematic practice of periodic continence. Since in this system married couples *de facto* use marriage completely and habitually, he would have good reason to answer the question for them and go no further.

He says that they may adopt the practice if they have sufficiently good reasons for doing so. He says further, by way of explanation why they need justifying reasons, that it is because of their affirmative obligation to procreate. This obligation follows the general rule for affirmative obligations; namely, it ceases when there are proportionate excusing causes. Obviously, the wording of such an explanation had to be couched carefully in terms that would leave intact

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the ancient Christian tradition of "virtuous continence, permitted even in marriage, if both partners consent."⁷ This could have been another reason for restricting his explicit statement of the obligation to those married couples who actually do use their rights completely and habitually. Theirs was the problem he was called on to solve and to which he seems to have directly addressed himself. But he did not declare explicitly, not even incidentally or *in obliquo*, that married couples have this obligation precisely because they use their marriage rights, nor did he say that those who do not use their rights do not have the obligation.

It seems to us, therefore, that an important question is left open for discussion here. Just as Pius XI left open the question whether there is an obligation to procreate, Pius XII seems to have left open the question whether the obligation is based on the state or on the use of marriage. It is left open because he did not explicitly settle it. In fact the wording of some parts of the passage in question even favor the idea that this obligation is attached *per se* to the married state itself. "Matrimony obliges to a state of life" the passage reads, "which, while carrying with it certain rights, also imposes the fulfillment of a positive work concerning the state itself."⁸

This latter doctrine, that the married state itself imposes this obligation *per se* on all married couples seems preferable to us for the following reasons:

(1) Procreation is the primary, intrinsic purpose of marriage, and marriage consists in an exchange of rights and obligations with a view to procreative acts. It is an easy and entirely reasonable inference that all who freely embrace a

⁷ *Casti Connubii*, AAS, 22 (1930), 559.

⁸ AAS, 43 (1951), 835-54, at 845; italics added.

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state of life which has this primary and intrinsic purpose should by reason of that very fact have an obligation *per se* to achieve this purpose. Compare the priesthood. Its most fundamental purpose is the offering of the sacrifice of the Mass. One who chooses the priesthood as his state in life has, by that very fact, an obligation *per se* to offer the sacrifice of the Mass. Ecclesiastical law imposes further duties in some cases; but the duty to offer sacrifice in virtue of the priesthood springs from the nature and the essential purpose of the priesthood. Since the nature of the married state itself provides an adequate basis for the obligation, there is no need philosophically of looking further for an additional natural law basis in the sexual use of marriage.

(2) Pius XII did not assert, and in our opinion it would be difficult to show, that the natural moral order obliges partners to procreate precisely because they make sexual use of marriage completely and habitually.

It is admitted by all that the complete use of marriage during sterile periods on individual occasions, even many individual occasions, does not impose any obligation to procreate. The reason is that the marriage act has other natural and intrinsic ends in addition to procreation which are separable from actual procreation or any intention of actual procreation. (The teachings of both Pius XI and Pius XII confirm this theological position.)

Then how can it be shown that merely because complete acts are performed habitually, and precisely because they are performed habitually, the natural law itself imposes on them an ordination to actual procreation? *Magis et minus non mutant speciem.*

The idea of a natural ordering of sexual activity to actual procreation such that it imposes an obligation to procreate, which obligation is present only when complete acts are

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performed habitually and is absent in all other cases, is not an easy concept to understand. It becomes still harder to understand when we recall that even this ordination does not obtain, and no longer imposes any obligation to procreate, whenever the partners have serious proportionate reasons for not procreating.

If there is some necessary order established by natural law between the use of sex and the intention of procreation or the actual achievement of procreation, why is it not present in all sexual activity? If it were, then it would be impossible to justify the use of the sterile period at all.⁹ St. Augustine believed there was such a necessary order and very logically rejected the use of the sterile period.

(3) We confess to a certain concern that an explanation of the affirmative duty based precisely on sexual use might tend to revive outmoded concepts concerning the theology of conjugal intimacy. Our explanation avoids the very beginnings of a return to the notion that the secondary ends of marriage have genuine value and are properly subordinated to the primary end only when they are used as means

⁹ F. Hürth, S.J., writing in 1931 said: "*coniuges autem ex ipsa operis coniugalitatis natura et ex fine primario matrimonii ulterius obligari ad curam positivam adhibendam et ad finem operis positive, pro posse, saltem ita promovendum, ut quoad tempora ageneseos naturae defectum quodammodo suppleant, et ita efficiant, ut fructus copulae ob intervenientia obstacula naturalia periclitatus, tamen obtineatur: gratis asseritur. Valet, quod modo dictum est, scilicet si huiusmodi haberetur obligatio, numquam naturalis copula, quotiescumque origo novae vitae ex defectu causarum naturalium est impossibilis, licita esset. Quod enim ex natura rei sequitur et contra rei naturam offendit, semper valet, et semper prohibitum est. . . . Quae dicta sunt, valent tum de uno alterove casu particulari tum de habituali temporum observatione: neutra praxis (ratione sui) probatur illicita.*" "*De sterilizatione physiologica,*" *Nouvelle revue théologique*, 58 (1931), 674-89, at 686, 687. But in his commentary on the Address to the Midwives, Fr. Hürth favors the view that the natural law establishes a necessary order (with its consequent obligation) between habitual complete use and the achievement of the primary end which is not present in occasional complete use or in incomplete use; cf. *De re matrimoniali* (Rome, 1955), pp. 112-15, nn. 23 and 24.

to the achievement of the primary end. It also avoids the appearance of a return to the obsolete way of looking at sexual concupiscence as an evil the use of which has to be compensated by offspring, or the still less acceptable idea that children are the price one is obliged to pay for the pleasures of sex.

(4) Furthermore, if the obligation to procreate is consequent upon actual regular use, why is it not consequent upon regular, incomplete use of marriage? Incomplete sexual acts in marriage are of their very nature ordered to the complete act and to procreation. It is only because they are so ordered that they are permissible in marriage. How explain that couples who regularly enjoy complete sexual relations have this obligation to the race, while those who regularly indulge only in incomplete acts (such as *amplexus reservatus*?) do not have the obligation? What reasons can be found for making these distinctions in natural law obligations?

It is argued that to safeguard the achievement of the primary end nature had to impose the obligation of procreation only on those who regularly and completely use marriage. An obligation on those who use marriage rarely, or only incompletely, is not necessary to safeguard the primary end because there is little danger that large numbers of people would be in this category. But argumentation which is based merely on the need of an obligation to insure the achievement of the primary end for the conservation of the race is unconvincing. The facts of history deny such a need. There is no danger that the world would be underpopulated whether this obligation exists or not. We have not known about the obligation hitherto, and yet the population of the world has not suffered thereby at all. Despite devastating wars and plagues, despite the widespread

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use of contraception and abortion, the human race has continued to grow to the point where even sober-minded scholars recognize a real problem of overpopulation.

The foregoing points show that an explanation of the duty to procreate based on the use of marriage is unconvincing. It is particularly hard to accept a natural law obligation to procreate which comes into existence only when, and precisely because, the partners make complete, habitual use of sex in their marriage.

On the other hand, the explanation that this obligation derives from the married state is logical in itself. It recognizes that there is a natural order established by God between matrimonial society and its primary end, and that this natural order includes *per se* an obligation upon those who choose this state of life to achieve its primary end.

Furthermore, this explanation adequately protects the ancient tradition concerning perfect continence in the married state. To assert that all couples are *per se* obliged to make an affirmative contribution to the conservation of the race means that the nature of the married state requires this in ordinary circumstances, but it also leaves room for the exceptional case in which a devout couple by mutual consent agree to practice perfect continence. Surely such cases will be rare and exceptional. It is not derogatory to Christian continence to say that it is only by exception compatible with Christian marriage, whose primary purpose is procreation.¹⁰ Incidentally we may remark: if the underlying reason for attaching the obligation to the use of marriage is, as we suspect, the desire to protect the Christian tradition of continence in married life, we arrive at a strange ascetical anomaly when we exempt from the ob-

¹⁰ See John C. Ford, S.J., *The Validity of Virginal Marriage* (Worcester, Mass., 1938), p. 132, n. 46.

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ligation those who use marriage regularly but incompletely. Christian tradition has little or nothing to say about such half-way continence.

The position we consider preferable, then, and which we propose tentatively for discussion by other theologians, may be summarized as follows:

The institution of marriage has as its primary, intrinsic end, from nature and from God, the procreation of children. Consequently, all those who enter this state are *per se* obliged to procreate, if they can. Consequently, they are obliged to use their marriage rights during fertile periods often enough to discharge this obligation.¹¹ But this obligation is an affirmative one, and individual couples may be excused from it temporarily or permanently for proportionate reasons. The desire and ability to practice perfect continence for a supernatural motive, if shared by the partners, is a legitimate, permanent excuse from the obligation to procreate which would otherwise be incumbent on the partners from their very state as married. The desire to practice periodic continence for one or more of the various motives or indications mentioned by Pius XII is also a legitimate excusing cause, either temporary or permanent. We will discuss these justifying causes in the following chapter.

(2) THE VIRTUES THAT REGULATE THE OBLIGATION

The bringing of children into the world involves the tre-

¹¹ This position raises questions like these: Is it licit to choose knowingly a sterile partner for marriage, without any special excusing cause, simply through a desire for a childless marriage? Is there an obligation to use ordinary means to insure the fertility of intercourse or to correct curable and inculpable sterility? Could there be an obligation to make use of assisted insemination? Most such questions are academic. In any case, we do not believe that married couples, precisely in virtue of the affirmative obligation to the race, are obliged to undergo notable inconvenience to insure the fertility of their union.

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mendous responsibility of cooperating with God in the production of human beings who are thus launched on a course that leads, for better or worse, to an eternal destiny. Procreation, therefore, should be undertaken above all under the guidance of supernatural prudence.

The field for the exercise of this prudence has been considerably enlarged now that there exists a legitimate and more or less effective method of family planning. When the only legitimate method was the generally impracticable one of complete continence for long periods of time, the sole realistic decision in most cases was to rely on divine providence. Today, where periodic continence is feasible, married couples have more complex decisions to make. More often must they combine reliance on divine providence with reliance on their own human providence in planning a family. In other words, procreative activity must be regulated by supernatural prudence.

This would be true, of course, whether we recognized an affirmative obligation to procreate or not. But once the obligation is recognized, it becomes more pertinent, from the theologians' viewpoint, to determine more in particular the virtue or virtues which govern this duty to procreate.

We have already quoted in full the only passage of the allocution that gives any key to the specific nature of the duty to procreate. In this passage the Holy Father says nothing explicitly about the virtue that inculcates the obligation. Some theologians have explained it as an obligation of legal justice, the procreation of children being a contribution to the race imposed for the common good of the race.¹²

¹² It goes without saying that since the partners are obliged to render the debitum and to fulfill this obligation by acts which are *per se* suitable for

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The idea that legal justice is involved is strongly suggested by the technical language of Pius XII, especially where he uses the words "prestation" and "claimant." He represents the human race as having a claim or right against married couples to contribute to its conservation. It is possible, however, that this language is metaphorical and not to be taken too literally. Certainly the good of the social community is not the only basis for the duty. Less than a month after the Address to the Midwives, Pius XII warned against

a deeper misery still from which the family must be preserved, namely, the degrading bondage to which it is reduced by that mentality that tends to make of it a mere organism at the service of the social community for the purpose of procreating therefore a sufficient mass of "human material."¹³

He later said that "the primary office of marriage is to be at the service of life."¹⁴ But he is far from admitting that the procreation of life is primarily at the service of the state or of human society.

There are difficulties if we press the concept of legal justice too far. Where strict legal justice is concerned, the obligation of the individual corresponds to a right, usually an enforceable one, on the part of society. It would hardly have been the thought of Pius XII that his "claimant—in this case the human race" had a right in legal justice to insist that married couples procreate, and to punish those

procreation, the duty of procreation is to this extent regulated also by the virtue of communicative justice. See above, Chapter 5, p. 85, for a discussion whether the fundamental *ius in corpus* includes normally not only a right to intercourse, but also a right to children.

¹³ Allocution to "Family Front" and Association of Large Families, 26 Nov. 1961, AAS, 43 (1951), 855-60, at 856.

¹⁴ *Ibid.*, p. 859.

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who failed to make their obligatory prestation. Much less would he have been likely to attribute to the state or to society or to some future world government the legal right, in a case where the common good of the race required fewer children rather than more, to demand that married couples not procreate, and to punish those considered too prolific.¹⁵ But if strict legal justice is involved, then rights on the part of society should correspond to duties on the part of the citizen, and if the common good can ordinarily demand procreation of them, the common good might at other times require a limit to be put on procreation.¹⁶

Then, too, it is somewhat strange to speak of an obligation in legal justice to the whole race, because we do not usually think of the whole human race as a moral person capable of being the subject of rights in legal justice. On the other hand, all human beings form under God some sort of natural, universal society, which, with expanding means of communication, should and will become more and more organized. The common good of this natural society of all mankind in its present unorganized condition may be hard to define and delineate in this as in other matters, but the race seems to have sufficient natural unity of general destiny under God to become a subject of rights of legal justice, somewhat as nations are.

It is because of considerations like these that we hazard the opinion that attribution of this obligation to legal justice, while valid in some incomplete or analogical sense, requires further clarification before it can be accepted as the

¹⁵ See e.g., *Allocution to Geneticists*, 7 Sept. 1953, AAS, 45 (1953) 596-607, at 606.

¹⁶ Anthony F. Zimmerman, *Catholic Viewpoint on Overpopulation* (Garden City, N.Y., 1961), p. 160, speculates curiously about a situation of absolute overpopulation in which the state would enforce a natural law duty (declared by the Church) not to procreate.

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entire basis of the obligation. While not denying then that legal justice is somehow involved, we suggest that the virtue of piety (*pietas*) may be even more closely and appropriately associated with this duty.

Piety is a virtue which is exercised chiefly toward family and fatherland. Why can it not be extended further to the whole human race? The concept of piety toward the whole human family has its difficulties, but seems easier to understand than legal justice toward the whole of mankind. But why invoke it? Why multiply obligations? The reason for introducing piety into the discussion is not to multiply obligations, and in fact does not multiply them, but to point out an aspect of this duty to procreate which would otherwise be overlooked.

When obligations are explained in terms of justice, even of legal justice, debtor and creditor are represented as opponents or at least as opposite and separate. A basic, characteristic note of all justice is alterity. When the human race is represented as a claimant or creditor, and the married couple as debtors bound to make a certain prestation, this way of looking at the relationship necessarily emphasizes the element of alterity. This is inadequate because there is also a fundamental element of identity and unity. The virtue of piety, like charity, emphasizes the unity of the individual family and of the individual fatherland. Why can there not be a piety toward the human race which emphasizes the unity of the whole human family? Procreation to conserve this human family would then be an act not only of legal justice in some sense, but also of piety.

Furthermore, there is a sentence in the allocution which seems to hint at piety towards one's family, one's country and the Church. For the Pope, explaining the affirmative obligation, said: "The individual and society, the people

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and the state, the Church itself, depend for their existence, in the order established by God, on fertile marriage." This would make it appear that the affirmative duty of procreation regards not only the whole human race, but also these lesser divisions of it. The rearing of children is an act of piety toward them (the children themselves), or at least toward the family unit, including the parents.

There is in human nature a natural urge and need for self-continuation, not just race continuation. The parents' continuation of themselves in their children is one of the highest and most fundamental of the personalist values in marriage. Thus procreation joins together in itself both the good of the species and the personal good of the parents. Canon Jacques Leclercq makes some profound reflections in this regard:

. . . It is too simple, and even partially false, to set the continuation of the race and the happiness of the married couple in opposition to each other; for it is partly false to present reproduction under the sole aspect of continuation of the human race.

The use of abstract terms like "human race" or "human species" offers the same disadvantage here that it does in political science. To speak always of the State or nation causes people to lose sight of the human reality to which these entities were reducible. In like manner, to speak of the human race causes one to overlook the fact that the human race are men, that men are men and women, that they are couples, that the child is the offspring, not of the human race, but of his parents, and that he continues the human race only in so far as he continues his parents who are men.

Instead of speaking of continuing the human race, let us rather say that men have the duty of continuing themselves. For men to continue themselves, it is imperative that men and

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women marry, at least as a general thing—that is the lot of the great mass of men and women. For men to marry, it is essential that this union be the ordinary requisite for their happiness. Moreover, for them to desire to have children in their union, it is necessary that such children be the complement of their union; and for the children to find in the family the formative factors which they need, it is indispensable that this education be tied up with the happiness and the union of the parents.

In this way, such a close bond of mutual dependence exists between the conjugal union and reproduction that it is wrong to separate them, and still more so to oppose them to each other. Love begets the child, and the conditions for reproduction are all the more perfect as the love between the parents is more perfect. For the sake of convenience of treatment one may indeed distinguish love and procreation as two separate ends. Yet it often happens that clearness runs the risk of turning into obscurity, because the desire for clarity leads to the neglect of certain nuances and thus to a distortion of the terms of the problem.

The tendency to separate the two terms has ever been strong. The essential corruption of the family order consists in the separation of love and reproduction. It assumes the most varied forms: we shall meet with it more than once in the course of this volume. In some societies, for instance, it reserves reproduction for marriage, while to the man it permits and even encourages love outside of marriage. In other societies, again, as in ours, it desires the radical separation of love and reproduction.

Another aspect of this separation is the tendency to see only the citizen in the child, to admit no moral bond between him and his parents, and to look upon reproduction solely as a social service. The parents are consequently to seek after love without considering anything else; when a child is born, society is to take charge of him. On the other hand, however, it follows from what has been set forth that, according to the natural order, the child continues his parents and does not continue

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society except in so far as his parents are members of it; that the parents are responsible for the child, and they have also the right, since he is their child and the being who is the continuation of themselves, to direct his education. Every doctrine that separates love from reproduction promotes the view that the child belongs more to the community than to his parents.

When treating the family, then, one may develop the subject equally well by starting from the child or by commencing with love, inasmuch as the child calls for love and love leads to the child.¹⁷

It seems theologically correct, then, to look upon the duty of procreation as regulated also by conjugal love, which, says *Casti Connubii*,

pervades all the duties of married life and holds pride of place in Christian marriage. . . . By this same love it is necessary that all the other rights and duties of the marriage state be regulated so that the words of the Apostle, "Let the husband render the debt to the wife, and the wife also in like manner to the husband," express not only a law of justice but a norm of charity.¹⁸

Furthermore, since it is part of the supernatural vocation of marriage to beget children for heaven, to raise up citizens for the City of God and for His worship, the virtue of religion, too, is regulatory of Christian procreation. St. Thomas says that the marriage act is meritorious if motivated by virtue, either the virtue of justice, when performed to render the debitum, or the virtue of religion, when performed to procreate children for the worship of God.¹⁹

¹⁷ Jacques Leclercq, *Marriage and the Family* (New York, 1941), pp. 13-14.

¹⁸ AAS, 22 (1931), 539-92, at 547-48.

¹⁹ Suppl., q. 41 a. 4, corp.: "Si enim ad actum matrimonialem virtus

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Finally, we must consider conjugal chastity. Writing shortly after the allocution, J. Diamond, S.J., asserted: "Positively to flout the primary end of marriage in this way [by practicing periodic continence without justifying reasons] is a disordered use of the specific act of the married state—the use of the generative faculty, and is therefore a sin against conjugal chastity."²⁰ We agree that chastity governs the affirmative obligation to procreate and that a failure to fulfill this obligation is a sin against chastity; but we do not agree with the argumentation or explanation sometimes given to establish this position, because that argumentation seems to suppose that the obligation is consequent upon the actual use of sex. We prefer the explanation that it is based on the married state itself.

The virtue of chastity is quite commonly taken in a restricted sense, according to which its object is the regulation of strictly venereal operations, that is, operations of the genitals as genital, and as normally accompanied by venereal pleasure. In a wider sense, accepted by many theologians, its object is taken to be the regulation of the whole generative function. Zalba defines it as a "special moral virtue, a subjective part of temperance, which inclines one to regulate the use of the generative faculty according to right reason illumined by faith."²¹ When taken in this broader sense it includes the regulation of acts which are not strictly venereal. For example, most theologians would consider that chastity is violated when contraception is

inducat vel iustitiae, ut debitum reddat; vel religionis, ut proles ad cultum Dei procreetur; est meritorius."

²⁰ *Clergy Review*, 37 (1952), 766 (Correspondence).

²¹ M. Zalba, *Theologiae moralis summa* (2nd ed.; Madrid, 1957) n. 259. See also Vermeersch, *op. cit.*, nn. 5, 77; V. Vangheluwe, "De temperantia stricte dicta eiusque partibus subiectivis," *Collationes Brugenses*, 47 (1951) 38-48; John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 20 (1959), 590-629, at 628-29.

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practiced by means of anti-fertility drugs, or by spermicides used after the act. Yet these abuses precede or follow the sexual act itself; they are not immediately and directly concerned with venereal activity strictly so-called. Whether taken in the restricted or the broader sense, we consider chastity to be a virtue that governs the duty to procreate.

Any affirmative obligation means in the concrete the performance of certain affirmative acts. The duty to procreate obviously means the performance of sexual acts during fertile periods. It may include other acts, but before all else it must mean the positing of sexual acts during fertile periods by those who are capable of them. These acts of intercourse, *positis ponendis*, are acts of the virtue of chastity. Omission of them at some point becomes a sin against the virtue of chastity.

In the theory that the duty to procreate stems from marriage itself, this fault against chastity would be committed even if the partners also omitted intercourse during sterile periods. For in this theory it is not the pleasure of sex, enjoyed during sterile periods, which carries with it the obligation of having children, and therefore of having intercourse during fertile periods, too. It is not the sexual activity itself, as systematically restricted to sterile periods, which is disordered. It is not that the sexual acts eventually become somehow infected with a violation of chastity simply because additional fertile acts are not also performed. Rather it is the omission of the fertile acts, required *per se* by marriage itself, that constitutes a violation of chastity.

We have become accustomed to thinking of chastity as a negative virtue. It prohibits all directly voluntary venereal activity in the unmarried. It prohibits unchaste sexual activity in the married. We do not readily enough think of

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sexual activity in marriage as being a positive act of the virtue of chastity. We think of it, of course, as the *debitum*, which is an act of the virtue of justice. Perhaps we even slip back at times into thinking of it as somehow tainted, needing to be justified, and excusable only because it is a debt of justice. This view would be theologically retrogressive.

The virtue of conjugal chastity is a positive virtue, regulating affirmative acts, including those sexual acts performed during fertile periods as part of the duty to procreate. Since these acts are venereal acts strictly so called, it is chastity in the restricted sense that governs them. But chastity in the broader sense may also be invoked. The affirmative duty may imply other acts which are not strictly venereal. For example, there may be a duty to take reasonable measures to insure fertility, and there certainly is one to take reasonable measures to safeguard the conceptus from harm. These are uses of the generative faculty, which seem to be part of the affirmative duty to procreate (there are doubtless others), and which are therefore part of chastity taken in a broader sense. Furthermore, contraception and other abuses of the generative faculty could violate the duty to procreate even if they involved no immediate abuse of venereal activity. Consequently it seems correct to attribute the affirmative duty to procreate to chastity taken in the broader sense, as regulating "the use of the generative faculty according to right reason illumined by faith."

What we have said about the affirmative duty to procreate and about the virtues which govern it has been necessarily tentative. The doctrine has been so recently accepted into theology that its place, its meaning, and its implications cannot be fully explored without the passage of more

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time and the expenditure of more study. We have made no attempt to make an exhaustive list of all the pertinent virtues. We have not attempted to say which virtue elicits those affirmative acts that fulfill and inasmuch as they fulfill the duty. Nor have we attempted to distinguish whether legal justice, to whatever extent it is involved, elicits its own acts in this matter, or merely imperates acts of other virtues as having a necessary ordination to the common good. Further studies on these points might be enlightening, at least for academic purposes.

At all events, justice, whether legal or commutative, is not enough. Conjugal love, conjugal piety, conjugal chastity and the virtue of religion are needed to give us a true understanding of the duty to procreate. The language of justice is "mine and thine." These are frigid words. The language of love and piety is "ours"—our marriage, our family, our human society, our religion. We believe that the theology of marriage will suffer if we accept the affirmative obligation to procreate without acknowledging at the same time the role these other virtues play in that obligation.

(3) LIMITS TO THE DUTY TO PROCREATE

The only explicit limits to the duty to procreate stated by the pope are the various excusing causes. But in the discussion of this important papal pronouncement, it was soon suggested that another limit is implicitly determined by the fact that the purpose of the duty is the conservation of the family, the state, the Church, the human race.²² This seems to mean that one measure of the duty as far as legal justice and piety to the race are concerned is the population need of the time. When this suggestion of an inherent limit to

²² See Gerald Kelly, S.J., "Rhythm in Marriage: Duty and Idealism," *America*, 87 (May 3, 1952), 128-30.

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the obligation was first made, the best social scientists seemed to think that fertile couples should have four or five children in order to make provision for the conservation and slight increase of the human race. Since then, with increased consciousness of the population problem, this number has been slightly reduced, at least for some countries. For instance, it has been estimated that a family of three children would sufficiently provide for the needs of the United States.²³

Those who place the basis of the duty to procreate in the use of sex find it difficult to accept this theory.²⁴ And in this they seem to be logical; for if use of sex is the basis for the obligation, the duty to procreate will depend, apart from excusing causes, entirely upon the decision of fertile couples to use or abstain from the marriage act.

But to us, and to others who place the basis for the obligation in the married state itself, the idea of a duty of legal justice or piety which is inherently limited by the population needs seems very reasonable. For one thing, it follows the analogy of other duties, whether to individuals or to society. For instance, on the individual plane, the strict duty of charity to one's neighbor is measured, not only by one's ability to help, but also by the neighbor's need. No one is strictly obliged in charity to give as much as he conveniently can to a neighbor whose needs are satisfied by much less than that. Another analogy, this time in the social sphere, is the duty of paying taxes. No government can justly set up a tax rule that each citizen must give the government as much as he can. The just measure of

²³ See John L. Thomas, S.J., *Marriage and Rhythm* (Westminster, Md., 1957), 116-17; also, Edwin F. Healy, S.J., *Medical Ethics* (Chicago: Loyola University Press, 1956), p. 166.

²⁴ E.g., Joseph Fuchs, S.J., *De castitate et ordine sexuali* (2nd ed.; Rome, 1960), p. 103.

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taxes must begin with the society's need. Once the general need is determined, then the tax is levied on the citizens proportionately, according to norms that include their relative ability to pay.

It has been objected that this theory of an inherent limit to the duty to procreate does not make allowance for the proportionate distribution of the duty to procreate. In our opinion, this objection misses the point of the theory. The theory is simply that there is a limit to the duty beyond which no couple is strictly obliged by legal justice or piety to have more children. The theory does not say that all couples have the same obligation as regards the number of children they should have. The excusing causes sufficiently take care of this need for proportion. As the pope himself mentions, by reason of excusing causes some couples would be entirely exempt from the duty of having children.

The theory of the limited duty to procreate has decided merit, it seems to us, in a Christian society which recognizes the important distinction between duty and supererogation. It provides a workable norm of child-spacing to those married couples whose main interest is to fulfill their duty; and it acknowledges that even the wealthy and the healthy can be acting beyond the call of duty by rearing large families.

This theory that the duty to procreate is limited by the population needs seems to us, as we have already explained, intrinsically reasonable. Moreover, though some have objected against it, it has won favor with many theologians;²⁵

²⁵ Verbal acceptance of the theory was expressed by a great majority of some thirty moral theologians who discussed it at Notre Dame in June, 1952, on the occasion of the annual meeting of the Catholic Theological Society of America. It has also been accepted by Fr. Thomas and Fr. Healy (see *supra*, note 23) and by John R. Connery, S.J., "Notes on Moral Theology," *Theological Studies*, 19 (1958), 569-71.

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and it certainly merits the status of a solidly probable opinion. There may be difficulty in determining the exact limit for various countries; but certainly today in the United States a family of four children would be sufficient to satisfy the duty.

(4) THE GRAVITY OF THE OBLIGATION

Before the Address to the Midwives in 1951 the question of the gravity of an affirmative obligation to procreate was not generally discussed because most theologians denied the obligation. At that time the question took another form. Is it gravely sinful to practice rhythm, at least for a long time, without a justifying cause? Only a handful of theologians were of the opinion that it was gravely sinful. The overwhelming weight of theological authority throughout the Catholic world rejected this opinion.²⁶

Since the allocution, the weight of authority seems to have shifted, because of certain language used by Pius XII in explaining the morality of periodic continence. Today apparently, the majority hold that to practice rhythm without a serious justifying motive, at least for a long time, or for the whole of marriage, or at least when no children have already been born, would be a grave sin. But other theologians still maintain that this would be only venially sinful.²⁷

²⁶ Giese, *The "Rhythm" in Marriage and Christian Morality*, pp. 53-56.

²⁷ Cf. Joseph Fuchs, S.J., *op. cit.* (supra n. 43): "Those who choose the sterile period without sufficient reason *sin*. In fact gravely, if they act thus throughout the whole duration of the marriage—as seems more probable to us and is at least insinuated by Pius XII, although others deny it. The same is to be said perhaps if they act thus for years without a reason. This is not so evident if the spouses already have a child or children." Compare Hürth, *De re matrimoniali*, p. 114: "If, however, such proportionately grave motives are lacking, then the continued use of the sterile period is not without fault, which eventually can become grave" ("*. . . quae aliquando evadere potest gravis*"); his italics.

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Our question can be proposed in either of two forms which are almost equivalent: Is it a mortal sin to practice rhythm without a justifying cause? or: Does the affirmative obligation to procreate bind individual couples under pain of mortal sin?

Our answer to these questions can be summarized as follows: Pius XII did not settle the issue of mortal sin in practicing rhythm unjustifiably. His words leave the question open for further discussion. The affirmative obligation seems to be grave *ex genere suo*, and therefore admits of *parvitas materiae*. Objective grave violations of the affirmative obligation would, in our opinion, be rare. In pastoral practice no one can legitimately impose on the consciences of the faithful a grave obligation in this matter.

The principal passage quoted to invoke the authority of Pius XII in favor of the gravity of the obligation reads as follows:

Consequently, to embrace the state of matrimony, to use continually the faculty proper to it, and in it alone, and on the other hand to withdraw always and deliberately, without a grave motive, from its primary duty, would be to sin against the very meaning of conjugal life.²⁸

One thing is very clear. In this passage Pius XII did not end the controversy over mortal sin. Had he wished to do this, he could easily have done so effectively and conclusively by inserting the one word, "mortally," after the word "sin" in this passage. He failed to do so. So glaring an omission must have been deliberate.

But does the language perhaps provide grounds for a conclusive inference that the obligation must be grave, by

²⁸ AAS, 43 (1951), 845-46.

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speaking of the violation of it as "to sin against the very meaning of conjugal life"; by calling it the "primary duty" of marriage; and by requiring "a grave motive" to excuse from the obligation?

The expression "to sin against the very meaning of conjugal life" is not definite enough to be the basis of a conclusive inference as to the gravity of the obligation. Lying is a sin against the very meaning of the faculty of human speech, but it does not follow that lying is gravely sinful.

To take the phrase "primary duty" in a literal theological sense proves too much. For it is simply not true, in a literal theological sense, that this duty is the primary duty of marriage. Pius XII would be the first to defend the traditional Catholic doctrine that the primary duty of marriage is the mutual duty that corresponds to the essential *ius in corpus*. It is a duty in commutative justice to perform acts which are *per se* apt for generation, but it is a duty which the partners owe not to society but to one another, in virtue of their contractual consent.²⁹

As for the expressions "grave motive," "serious reasons," etc., we believe that a careful analysis of all these phrases in the context would justify the interpretation that they are the equivalent of the expression "proportionate reasons."³⁰ Furthermore, in papal documents and in theolog-

²⁹ Perhaps he calls it a primary duty because it is a duty concerned with the primary end of marriage. Whatever the meaning—and we confess it is obscure—it does not form a basis for a conclusive inference as to the gravity of the obligation.

³⁰ AAS, 43 (1951), 845-46. On Nov. 26, 1951, a month or so after the Address to the Midwives, Pius XII, addressing a convention of the "Family Front," referred to the Address to the Midwives, and mentioned that in it he had asserted the legitimacy, within limits, of using periodic continence for the control of births. And he said of these limits (which are equivalently the "grave motives" of the Address) that they are "indeed quite broad" ("... i limiti—in verità ben larghi"), AAS, 43 (1951), 855-60, at 859. In his Address to the Hematologists, 12 Sept. 1958, shortly be-

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ical literature—even more so in non-technical language—phrases like these do not always mean, clearly and definitely, “sub gravi.” In our opinion, therefore, the language of this document, which is sometimes technical and sometimes not, does not require us to equate “serious reasons” with “binding under pain of mortal sin,” nor does it force us to infer that a violation of the affirmative duty to procreate is mortally sinful.

The conclusion from the foregoing is that Pius XII did not wish to settle any controversy about mortal sin.

Our own opinion, nevertheless, is that the duty to procreate is grave *ex genere suo*. Therefore it admits *parvitas materiae*. According to theologians the obligations of legal justice, of marital chastity and of piety are grave *ex genere suo* because the values involved, the good of the human race, of the nation, the family and the Church are so important. But they admit *parvitas materiae* because so often the effects of individual violations are of negligible consequence to the values they protect.

But in any event we believe that objective grave violations of this duty would be rare. First of all, most of those who are serious enough about their moral obligations to take the trouble to practice rhythm rather than resort to contraception would have a justifying reason for doing so. Others would have reasons at least partially justifying—not sufficient perhaps to make their practice licit, but enough to excuse it from grave sin.

Then, too, couples who already have even one child cannot, in our opinion, be accused of a grave dereliction of their affirmative duty if they decide to have no more.

fore his death, he referred once more to the Address to the Midwives, used the phrase “serious proportionate motives,” and said that he had spoken on periodic continence on that occasion “in order to put an end to the anxieties of conscience of many Christians,” AAS, 50 (1958), 732-40, at 736.

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A more fundamental reason for holding that objective grave violations are rare may be drawn from a consideration of the virtues that impose the obligation. Violations of these virtues are *ex genere suo* grave, but not *ex toto genere suo*, while the kind of duty involved here is such that actual grave violations in practice would be the exception rather than the rule.

Pius XII, using legal language which may be somewhat metaphorical, tells us that the claimant to whom this prestation is owed by the partners is the human race. It is a duty imposed by nature and the Creator for the conservation of the human race. He amplifies this by stating that "the individual and society, the people and the state, the Church itself, depend for their existence . . . on fertile marriage." Although he does not mention the family explicitly here it is doubtless included. This way of speaking invites us to measure the gravity of the obligation as it applies to any individual instance in terms of the needs of the race and of the other entities mentioned. What other measure or criterion of gravity can be assigned?

Our fundamental reason, then, for thinking that objective grave violations of the obligation would be of rare occurrence is that the omission of this prestation in any individual instance would rarely have any seriously damaging effect on the good of the race, the people, the country, the Church and the family. This would be true, in our opinion, whether the failure is considered as a violation of legal justice, or of chastity or of piety, or of some combination of these or other virtues.

It may be objected that if everyone refused to have children the common good would suffer grave damage. Therefore it is necessary to impose a grave obligation on individ-

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uals even if individual omissions would not of themselves be seriously damaging. This line of reasoning is not conclusive. If everyone lied habitually, the common good would suffer grave damage; if everyone refused to go to the polls the common good would suffer grave damage. Yet individuals do not ordinarily sin gravely by lying (even habitually) or by failing to vote. Besides, as far as an obligation based on the needs of the race is concerned, it is very unconvincing to speak of the necessity of imposing a grave obligation in practice and in each individual instance in order to conserve the race at a time when the danger, if any, is of overpopulation, not underpopulation.

The further objection may be made that this explanation is so generous that it makes the affirmative obligation nugatory. This would be true only for those to whom obligations under pain of venial sin are nugatory. We consider obligations under pain of venial sin anything but nugatory, and some of them to be extremely important matters. Think, for example, of the obligation of veracity, which is necessary to safeguard the whole structure of human social intercourse. But we do confess that the affirmative obligation to procreate remains a somewhat vague and indefinite thing in the present state of our theological knowledge. We propose our own opinions tentatively, with a view to inviting their revision through further discussion by other theologians.

Much of what we have said has been of a somewhat speculative character. But the question of mortal sin is so important that we think it advisable to stress this practical conclusion: *Given the present state of theological thought, no one, in pastoral practice, may legitimately impose a grave obligation on the consciences of the faithful to fulfill*

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an affirmative obligation to procreate. To put the same thing another way, it is not allowed to any confessor, no matter what his personal views may be, to refuse absolution to those who intend to practice periodic continence even for life, merely on the grounds that they do not have any justifying reasons. This point has been brought out repeatedly in recent years, notably in two important survey articles, one by Msgr. Lawrence J. Riley, the other by John A. Goodwine. Msgr. Riley wrote:

Can we come to some conclusion on this point? Personally, I should subscribe to the view of those theologians who teach that the prolonged practice of periodic continence without a serious reason is a mortal sin. . . . Yet, in view of the fact that the opposite opinion enjoys at least extrinsic probability, I could not in conscience insist on the stricter opinion in confession, i.e., I could not deny absolution to a penitent who intends to continue the habitual practice of periodic continence, even without a serious reason.³¹

And Father Goodwine put it this way:

Because of the diversity of theological opinion on the gravity of the practice, no penitent who insists on continuing the practice of periodic continence can be refused absolution merely because he or she has not sufficient reason. Personally, I feel that the couple who resort to periodic continence without sufficient reason in order to avoid parenthood completely—or even in order to limit their family to one or two children—would be guilty of mortal sin. But if such a couple insists on continuing the practice, even though they have no good reason for doing so, I would not feel justified in denying absolution. Theological opinion is not yet sufficiently unanimous to rule out the prob-

³¹ Lawrence J. Riley, "Moral Aspects of Periodic Continence," *Homiletic and Pastoral Review*, 57 (1957), 820-28, at 824.

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ability of the view that their conduct is not certainly a serious sin; nor do we have any clear statement of the Church's magisterium that it is a mortal sin.³²

For ourselves, we repeat what we said in 1954, because we believe it is true a fortiori today:

One thing is clear. In the present state of opinion, when the Pope refused to settle the controversy about mortal sin, when European theologians debate about whether there is a mortal sin, and American theologians debate as to what constitutes the mortal sin if there is one, it is decidedly premature to impose grave obligations in the confessional, and improper to preach to the people in terms of unwarranted severity.³³

In helping married people to make a decision as to the lawfulness of using rhythm it seems much more important to make sure that their consent is truly mutual, and that they are able to practice it without serious dangers to chastity or marital harmony and family welfare, rather than to inquire meticulously into the justifying reasons. After all, they are almost always the best judges of the reasons they may have for spacing their children or limiting their family by these means, and it was Pius XII himself who said that the reasons are of frequent occurrence, and that the limits within which these means are permissible are quite broad.³⁴

³² John A. Goodwine, "The Problem of Periodic Continence," *American Ecclesiastical Review*, 137 (1957), 156-67, at 164-65.

³³ "Notes on Moral Theology," *Theological Studies*, 15 (1954), 52-102, at 101.

³⁴ *Supra*, note 30.

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THE PRINCIPAL PROBLEMS concerning periodic continence that face the priest today are pastoral. Although the confusions of the past have been largely dispelled by statements of Pius XII, the priest in the ministry has often inherited some of these confusions. At times he may have adopted toward the practice of periodic continence a certain attitude of a priori negativity and disparagement which is hardly compatible with the teachings of theology or the modern directives of the Holy See.¹ The two preceding chapters have laid the foundation, it is hoped, for a correct Catholic attitude in pastoral practice. But the priest needs in addition more practical norms for giving counsel and instruction whether in or out of the confessional.

We should like to emphasize at the outset a point which has been frequently overlooked. When moralists enumerate the conditions under which periodic continence may be practiced, they are primarily concerned with what is sinful,

¹ See documents cited in Chapters 17 and 18.

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what is obligatory, what is permitted. They often restrict their discussion to this narrow aspect of the problem. But in pastoral practice the final judgment to be made by the married couple, when they seek spiritual counsel, is not merely whether they may practice rhythm without serious sin or without any sin. They want to find out what, in the concrete circumstances of their own lives, is the better thing for them to do; how they can best fulfill the vocation of married love and parenthood to which God has called them in Christ.

Much of the discussion about sin, and almost all the discussion about mortal sin, has tended to obscure this point. A casuistic preoccupation with possible sin and its boundaries has distracted attention from what is frequently the principal problem on which the couple seek guidance. At this point in their lives will they fulfill the responsibilities of Christian love and Christian parenthood by relying chiefly on divine providence or should they space the next child by the temporary practice of continence, either complete or periodic? Today many Catholics have a new and basic decision to make as to the relative roles of divine and human providence in planning the future of their family. To what extent should they try to plan the number of children themselves? Is it always more perfect to leave it all to God? The feasibility of periodic continence as a means of family planning has added a new dimension to Catholic thinking about family life.²

The present chapter aims at providing some of the practical guidance needed by priests because of this new dimension. But the chapter is by no means a complete pastoral theology of periodic continence. For that the priest must

² This point is developed below, p. 451 ff.

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supplement what we have here by other readings.³ To have clear ideas about obligations under pain of sin is a necessary beginning. But priests will not meet the real problem unless they go beyond this and help those who consult them to achieve personal perfection in their vocation to marriage.

Our plan, briefly, is to (1) comment on the three conditions required for the licit practice of periodic continence, (2) add, by way of *obiter dicta*, some practical suggestions, and (3) close with some reflections on responsible parenthood and the practice of periodic continence.

1. The Three Conditions

Before the Address to the Midwives theologians were substantially agreed that the three conditions for the licit practice of rhythm are mutual *willingness*, mutual *ability*, and a sufficient *reason*. It is true that Pius XII spoke only about the third of these conditions; but it is safe to say that he presupposed the first two, because the condition that both parties be willing is inherent in the marriage contract itself, and the condition that both be able is but an application of the general moral principle that danger may not be rashly courted. As a matter of fact, in recent years and

³ Especially helpful is John L. Thomas, S.J., *Marriage and Rhythm* (Westminster, Md.: The Newman Press, 1957). This book contains the most comprehensive and realistic discussion of the "indications" for the practice of periodic continence that we have seen. Also of special excellence in Father Thomas's book are his explanations of the respective roles of physician, spiritual director, and relatives in helping young married couples to have a true appreciation of their vocation and, if need be, to harmonize the practice of periodic continence with their vocational goals. See also: Gerald Kelly, S.J., *Medico-Moral Problems* (St. Louis: The Catholic Hospital Association, 1958), Chapter 21, "The Doctor and Rhythm"; S. de Lestapis, S.J., *Family Planning and Modern Problems*, Chapters 12, 13; Leon Joseph Suenens, *Love and Control* (Westminster, Md.: The Newman Press, 1961), Chapter 3-7. The chapters selected from Cardinal Suenens' and Fr. de Lestapis' books present a positive approach to sexual self-discipline and to the practice of periodic continence.

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especially in this country, most theological expositions of periodic continence have been given in terms of these three conditions.

Although the conditions look to distinct moral aspects of the practice of rhythm, they are by no means completely separate. They dovetail and intertwine. For example the question of sufficient reasons pertains not only to judging whether there is an excuse from the duty to procreate, but also, as we shall see, to making correct judgments about willingness and ability. Because of its pervasive character, it seems best to discuss the problem of sufficient reasons before referring to the other conditions.

SUFFICIENT REASONS

Pius XII made a significant contribution to explaining the conditions when he called attention to the fact that the duty of procreating, being an affirmative duty, admits of excusing causes. "Serious motives," he said, "such as those which are frequently present in the so-called 'indications'—medical, eugenic, economic, and social—can exempt from this positive, obligatory prestation for a long time, even for the entire duration of the marriage."⁴

The pope gave only general headings, not specific examples, of the reasons that would excuse from the duty of child-bearing. Moreover, from the wording of the text it is obvious that even these general headings were not intended as comprehensive. Other reasons, not included in these general headings, may also be sufficient. Here are some specific cases that would fit under one or more of the "indications": serious illness of a mother during gestation, as would be the case when pregnancy entails strain on the

⁴ AAS, 43 (1951), 846.

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heart or other organs or the danger of mental illness; danger in childbirth; illness of husband, wife, or of a child already born that would make it exceptionally difficult to care for another child; the fact that conception usually results in miscarriage or stillbirth; the real probability that future children would be mentally defective or have some other serious hereditary defect; the fact that parents are financially unable to provide for more children according to the standards of decent living frequently outlined by the Church—standards which include frugal comfort in living conditions, the possibility of properly educating the children, and the ability to save reasonably for the future; the lack of proper housing facilities; employment that is not conducive to parenthood, e.g., some forms of military service.

The reader will note that these reasons vary considerably in seriousness. Some (e.g., those concerning illness) might be of such a nature as to excuse permanently from the duty of procreating; others (e.g., inadequate housing facilities) might be merely temporary so that they would justify the postponement of the next pregnancy or a spacing of births, but would not constitute a permanent reason for practicing periodic continence.

In his discussion of medical indications, John L. Thomas, S.J., suggests the following interesting problem:

Taking the term *medical* in a broad sense, we can summarize some of the "indications" from this source as follows. First, there is the case in which the father is not able adequately to fulfill his role as head of the family and principal breadwinner. For example, during the last war it was necessary to reject several million American males on the grounds that they would not be likely to withstand the strain of military duty. It is not inconceivable that a considerable number of these men may not

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be capable of standing the normal strain of a numerous family. If one may reasonably judge that this is so in a given case, the practice of rhythm would be licit.⁵

We agree with Father Thomas's opinion; and we also agree that this might be a medical indication in a broad sense. But we think that it might better be called a psychological indication; and, even if were, it would still classify as an excusing cause from the duty of child-bearing because, as we pointed out above, the general headings enumerated by the pope were not intended as all-inclusive. It seems to us that the question of psychological unfitness for parenthood calls for serious consideration when the justifying reasons for periodic continence are presented. There are, we suggest, a number of cases in which personality defects on the part of husband or wife interfere to some degree with their being really good parents—at least of a larger family, perhaps of any family. It is true that these defects ought to be corrected before marriage if possible; but this is not always possible.

Perhaps our point will be clearer if we cite an example. There are some people who simply do not like children, who are ill at ease with children, and who would find it unusually difficult to be wholeheartedly devoted to the rearing of any children for whom they had to care. It can hardly be said that such people have no right to marry; in fact, for them, marriage with at least the limited sexual outlet of periodic continence may be the only practical way of saving their souls. Granted the supposition we make here—and we certainly do not consider it unreal—such people would be excused from the duty of procreating.

In the conditions now prevalent in the United States, if

⁵ Thomas, *op. cit.* (footnote 3, above), p. 129.

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parents seriously desire to space the next child, it would, in our opinion, be a most unusual case in which they would not have sufficient reason for practicing rhythm for two or three years. If serious proportionate reasons justify the practice for the whole of married life, then obviously much less serious reasons can be proportionate when there is merely a question of spacing the children. In fact, if we consider only the question of the licit practice of rhythm, the parents are justified, without special excusing causes, in spacing births so as to limit their families to four children.⁶ It is worth noting, however, that very seldom is this problem of spacing children merely a moral problem. More frequently than not, there is no question of just avoiding sin; it is more likely to be a matter of prudently resting a tired mother so that she can take better care of her family, or perhaps the necessity of recovering from the financial strain of the last pregnancy.

ABILITY TO PRACTICE PERIODIC CONTINENCE

Couples who attempt the practice of periodic continence may face many difficulties. They may be tempted to sins of self-abuse, to mutual fondling to the point of culpable extracoital orgasm, and even to infidelity. These dangers are especially great in the case of men, but women are by no means exempt from them. A not insignificant number of women are strongly passionate, and even among those who are not usually passionate many experience strong sexual desire during the fertile period.⁷ It seems clear, therefore, that for many couples the attempt to practice periodic con-

⁶ See our remarks on the limited duty to procreate in Chapter 18, p. 420 ff.

⁷ We state this merely as a fact: namely, that many women notice an increase of sexual desire during the fertile period when they are practicing periodic continence. Whether the explanation is physiological or psychological is not clear.

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tinence may be an occasion of serious sins against chastity, even a proximate occasion.

And there are other dangers, perhaps less tangible, but very real. The necessity of regulating physical love by a calendar may cause tensions in married life and spoil that harmony that should characterize married love. If children are avoided entirely, paternal and maternal instincts are thwarted. For the woman especially this may mean a profound loneliness at about the time of the menopause—just the time when she may be most in need of comfort. And when the family is limited to one or two children, the children themselves may suffer. Other things being equal, their characters generally develop better in the larger family.

The dangers mentioned here do not of themselves make the practice of periodic continence illicit. But if the dangers are actually existent and are rashly courted, then periodic continence is illicit—in fact, it may happen in some cases (e.g., when there are frequent sins against chastity) that there is no real practice of periodic continence but only a periodic abstaining from natural intercourse. At this point, therefore, one can see how the condition that both must be able to practice continence ties in with the need of a good reason; for the existence of a good reason for avoiding pregnancy is required first, to justify the risks, and second, as a normal prerequisite for obtaining the grace necessary, to rise above the dangers.

In other words, our general principles on occasions of sin are to be applied. If the attempt to practice rhythm is an occasion of sin and there is no proportionate reason for the practice, the occasion is a voluntary one. Hence, if the occasion is proximate and the sins are mortal, a confessor or spiritual director must insist that the attempt to practice

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rhythm be discontinued. But when there are proportionate reasons for periodic continence, the occasion of sin is necessary and the priest's first duty is to try to help the couple make the occasion remote by supernatural means, such as prayer and the sacraments, and by natural means, such as avoiding special circumstances that increase temptation, especially by tempering manifestations of physical affection at times when there is to be no intercourse.

It would be a mistake, however, to think that this problem of ability to practice periodic continence is entirely solved by an application of the principles relevant to occasions of sin. Or perhaps the problem itself illustrates that "making an occasion remote" has a more extensive meaning than is usually connoted in theological treatises. At any rate, in this particular case of practicing periodic continence, there is need, as Fr. Thomas explains very well,⁸ of making a total adjustment which, though centered about continence, reaches out to many other aspects of marital devotion and harmony. A recent article by a British Catholic physician, Dr. L. Newell Moss,⁹ helps to make the problem more real and concrete. Dr. Moss describes the case of a thoroughly devoted young Catholic couple, a case in which the husband spends his evenings at home, helping with the house work and in the care of the children, and all the while greatly enjoying his wife's company, as she also enjoys his. But after the advent of several children, they realize that for financial reasons they must call a halt, at least for the time being. After discussing the matter with their parish priest, they decide to practice periodic continence. "Up to this time," writes Dr. Moss,

⁸ Cf. *op. cit.* (*supra*, footnote 3), Chapter 6, "Marital Adjustment and Rhythm."

⁹ "Catholics and Family Limitation," *The Catholic Medical Quarterly* 15 (October, 1962), 127-32.

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they have not considered what they are up against. Now comes their first problem: how to practice continence and at the same time go on living together. Remember that by this time the pattern of their lives has been set, a pattern built up over several years, a pattern made up of all those characteristics so essentially Christian, so essentially worthwhile: a fulltime love and devotion to wife, to children, and to home. On the surface it seems that those very characteristics are to be the husband's greatest difficulty. If he had been more selfish, more extrovert, his problems would be far less. He cannot deal with this problem of continence as he would if, say, he wanted to stop smoking—by putting his pipe away in a drawer and keeping his mind so busy with other thoughts that he has not time even to think about smoking. He cannot do that with his wife, nor can he suddenly give up doing all the things about the house, and leave his wife to struggle on alone while he goes out and busies himself elsewhere. Next, instead of going to bed thanking God for a devoted and attractive wife, he gives her a perfunctory kiss, turns over and tries to go to sleep, fearful lest his natural inclinations should get the better of him. His wife is upset and hurt, and usually fails to understand why he has suddenly changed in his attitude towards her. She wears her pretty frocks in the evenings and makes herself attractive for him, and he, now always on guard against his inner self, no longer dares feel joy at seeing her and being attracted to her. And so it goes on, both of them puzzled and worried at the sudden change. Where before there was perfect harmony, now there is constant tension and mental chaos. After a while they have a violent quarrel, then make it up, and usually decide to take a chance and hope for the best. Now what happens? Until her next period both she and he live in a state of further acute mental tension, and, if the period does not come, she feels that somehow or other she has let him down, and he also feels resentment. Is it any wonder that after some months of this kind of life only those of the highest spiritual character can hope to survive?¹⁰

¹⁰ *Loc. cit.*, pp. 127–28.

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The foregoing is a good picture of psychological failure to adjust to the demands of periodic continence. Dr. Moss goes on to show how this psychological failure leads some into sins against chastity, even to the practice of contraception, with the rationalization (not too uncommon) that the Church does not understand their problem and that, after all, contraception is no more against nature than the strained life they have been living. And he correctly suggests that a most critical need is to help these young people to have the proper psychological attitude and to keep feelings under rational control without becoming victims of intense emotional stress.¹¹

BOTH WILLING

It is usually stated that the practice of periodic continence is not permissible unless both parties are willing to practice it, that is, there must be a mutual voluntary agreement. For pastoral purposes this principle can be more accurately expressed, perhaps, by saying that neither husband nor wife should insist on the practice against the other's reasonable will. To do so would be to violate the marriage contract, which gives the parties a permanent

¹¹ An ideal psychological attitude consists in appreciating the periods of continence as naturally rewarding, because they help to achieve the goal indicated by the reasons for practicing rhythm; as supernaturally rewarding because the hardship of abstinence can become the source of many graces for themselves and others, and as a means of deepening and ennobling their mutual love by emphasizing the suprasensible aspects of it. As for learning to keep feelings under control, Dr. Moss insists on the need of avoiding situations that unnecessarily create a "build-up" of sensations. (For more about this see the next footnote.) On these problems of attitude and conduct, spiritual directors and married couples ought to get great help from Claire McAuley's *Whom God Hath Not Joined* (New York: Sheed and Ward, 1961). It is true that the McAuleys' problem is to maintain a brother-sister relationship, and that is different from the problem of validly married people; but the way they solve the problem, as regards both motivation and means, can be useful and inspiring to all married people during any period of sexual self-restraint.

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right, *per se*, to intercourse and to children. And yet this right is not absolute. There are cases (e.g., sickness of either husband or of wife), in which the right to intercourse and to children is temporarily or even permanently suspended—and that, quite apart from any question of practicing periodic continence.

When the parties are in agreement, there is no problem of violating the marriage contract. It is when one party is unwilling, but his or her unwillingness is unreasonable, that difficult and delicate questions of morality can arise. Here again we see how the conditions dovetail and help to explain one another. For there are undoubtedly some cases of serious reasons (danger in pregnancy; very poor health, mental or physical; prolonged unemployment, etc.) when a wife, for instance, would not be unreasonable in insisting that her husband try to practice rhythm. Unwillingness even to try would be unreasonable on his part.

Yet suppose he did honestly try and found that he was frequently falling into sins of unchastity? No general answer can be given for this situation. We raise the question in order to indicate that personality factors and special difficulties may make the final judgment on the licit practice of rhythm very delicate. The generally simple formula of the three conditions turns out to be not so simple after all. It may well be, in a case like this, where the husband is weak, that the final judgment made in conjugal love might be to forego the attempt to practice rhythm. Or it might be that the husband must be given some very special pastoral (and wifely¹²) help towards living chastely while trying to

¹² Speaking of taking means to avoid the "build-up" of sensations, Dr. Moss (*art. cit.*, p. 129) says: "To give one simple example of this problem of build up: can you imagine a parish priest asking or even thinking of what kind of clothes some of these wives wear? and yet when you see some of them in their modern next-to-nothing undies and nighties, as we do, surely

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protect his wife's health. Similar cases might occur in which the husband's insistence on rhythm would not be unreasonable and the wife would need special counsel and spiritual comfort.

To avoid hasty oversimplification on the question of mutual willingness and to avoid the tendency to think of the right to intercourse in too absolute terms, the priest counselor should keep in mind: first, whenever one of the parties has sufficient reason to refuse intercourse altogether, he or she is presumably *a fortiori* justified in refusing it during the fertile period only. In other words, he or she may, without injustice, insist on the practice of rhythm against the will of the other party. Secondly, it requires a much less serious reason to justify the refusal of intercourse during the fertile period only than to refuse it altogether. The shorter the period during which intercourse is refused, the less serious the reason required, *per se*, to justify the refusal. This principle would be abused, however, if it were invoked to thwart the right which each party has *per se* to parenthood. There may frequently be reason enough to space children, more rarely reason enough to avoid them altogether. The right, in normal circumstances, to raise a family is fundamental.

The priest should be the last to fall into the modern secular fallacy that sexual intercourse is an imperative necessity for everyone or that the urgency of sexual desire is the

we realize that that kind of thing will only lead to a visual build up and certainly cannot be of much help to the husband at a time like this." Claire McAuley (*op. cit.* pp. 79-80) expresses the idea in her unique way: "It is shocking to realize how much of a household exception modesty has become in so many little ways until you begin to lead a life of consideration for someone else's morals. A lacy slip constitutes pretty good coverage compared to some of the bathing suits I have worn, but the days of flashing to the phone in one came to a quick halt when I caught the kind of look generally reserved for Brigitte Bardot in John's eye one morning."

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criterion of reasonable need. Unfortunately, in fallen nature, sexual desire is often anything but reasonable. If, in the face of strong reasons for spacing or limiting the number of children, one of the parties adopts the attitude: "I must have sexual satisfaction, and I am going to get it one way or another, no matter what the reasons are for temporary abstinence," his or her sins can hardly be attributed to the other party's reasonable insistence on rhythm. This would be true a fortiori where a sort of spiritual blackmail is resorted to: "Either give me intercourse now or I will go elsewhere, and you will be responsible for my sin." In such cases in which no honest effort is made to exercise the self-control which the situation requires, the "occasion of sin" is the person's own frame of mind rather than the practice of periodic continence.

The words of a modern psychiatrist, speaking of special cases where total abstinence from intercourse is necessary in married life, are true a fortiori of the cases we have in mind, cases in which there are strong reasons for spacing or limiting the number of children and one of the parties is unreasonably opposed to the practice of rhythm:

The belief that adults simply must have sexual intercourse is a purely secular belief that seems to have been sold to all modern men and women—Catholic and non-Catholic.

The Catholic Church knows that such reasoning is wrong. She knows, not only from the divine message committed to her to teach mankind, but also from two thousand years' experience in dealing with men and women. She can show the world the example of countless persons who have vowed and kept celibacy all their lives: the countless unmarried men and women in every age who had no right to marital intercourse and managed, with God's grace, to live happily without it and the countless widows

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and widowers who were bound to remain chaste and with God's grace did so.

Admittedly, the case is different when two people, married and committed to life in common, live together intimately from day to day. Total abstinence is harder in such circumstances. That's why a greater and higher love is necessary, where friendship deepens while immediate physical satisfaction is denied. St. Augustine points to the source of this higher love when he says:

"God does not command impossible things, but when He commands, he warns us to do what can be done and to ask for what cannot and gives us help so that we can." Prayer can always open up new sources of power.¹³

2. Obiter Dicta

The priest's attitude ought to be balanced and sympathetic. Pope Pius XII admirably illustrated what we mean. When he explained the morality of periodic continence, he made it clear that there are limits within which it is permissible; but a month later he added that these limits are very wide and he encouraged research to make periodic continence more secure; and less than a month before he died he referred again to his former remarks and said that he had made them in order to give peace to troubled consciences. His tone was quite different from that of the literature—all too abundant—which has branded the use of periodic continence as a manifestation of selfishness, a refusal to trust in God, and an unhappy, barely tolerable compromise.

Generally speaking, when married people want spiritual counsel concerning the practice of periodic continence, it is better that the priest see them outside the confessional,

¹³ Cf. Robert P. Odenwald, M.D., "Too Many Children?", *The Sign* 41 (March, 1962), pp. 16-17, 77-80, at p. 80. *Italics added.*

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and that he talk to husband and wife together and separately. Our present remarks are made with this situation primarily in mind. Obviously, there are some cases in which one of the parties cannot or will not be present; and in such a case the priest has to do the best he can under the circumstances. But there are decided advantages in talking to both husband and wife together, and then separately. One can more readily see whether both parties are *really willing* to practice periodic continence; and one can more easily bring out the possible difficulties that either or both may experience and thus help them to a mutual understanding of the problems and of what they must do in order to preserve their vocational ideals in the face of difficulties. Also, having both parties together diminishes the danger of being misunderstood and misquoted, while on the other hand, separate interviews sometimes bring out matters which the partners do not care to speak about in each other's presence.

Many theological expositions of periodic continence stress the point that the priest does not give permission to practice it. The point is worth stressing because there seems to be a widespread misunderstanding about it. Neither as spiritual advisor nor as confessor does the priest give permission. His function is to help the married people to make a correct judgment whether the practice of periodic continence would in their case be licit or illicit, advisable or inadvisable. We have purposely said that he helps them to make a correct judgment. Except perhaps in very rare cases, it is not good counseling to make the judgments for the parties concerned. The function of the counselor is to help them to see how to make the judgment. If they are not mature enough to make the final decision themselves, it may be doubted whether they are sufficiently mature to

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practice periodic continence effectively and constructively—that is, in such a way that they profit spiritually from it.

Among the people who come to him for his “permission” to practice periodic continence, or for his approval, or his advice, the priest will perhaps occasionally note that there are some who do not really have good reasons for the practice but who are rather motivated by false standards of married life or by an undue fear of child-bearing and its consequences. In such cases, the priest’s apostolic goal is to bring the people to a correct appreciation of their vocation, specifically of the vocation of parenthood. How to do this is a matter for the priest himself to decide according to his own personality and capacity and to the personalities and capacities of the married couple. The one suggestion we would make is that, if he cannot do it immediately, it is better for him to keep the confidence of the couple and not to tell them bluntly that they would be sinning by practicing the rhythm. In saying this, we do not mean to belittle venial sin. Rather, we sponsor the general pastoral principle that, when some irregularity in conjugal relations is only venially sinful, it is often more effective to stress the psychological or social disadvantages of the practice than to insist on sin. If the priest follows this course of action with such people and continues to see them at regular intervals, they may gradually see that they are making a mistake and then they will welcome his help in correcting it.

But, as we have already implied, we think that the great majority of couples who take the trouble to consult the priest do have good reasons for at least a temporary practice of periodic continence. Sometimes these reasons are excellent—perhaps even compelling; and at other times they

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may strike the priest as somewhat insignificant or at most borderline.¹⁴ We believe that the priest should lean toward benevolence and away from rigorism in interpreting these reasons; that he should accept the sincere judgment of these people who obviously want to do the right thing and then help them to sanctify the practice of periodic continence. As John J. Lynch, S.J., observes: "Sometimes the reasons they allege are too readily dismissed as insignificant, either because of a confessor's failure to evaluate those reasons realistically from the penitent's point of view, or because of an exaggerated notion of what is required for justifying cause."¹⁵

Sometimes married people come for advice, not about practicing periodic continence, but just about the difficult situation in which they may find themselves. And the priest may note that this is a situation in which one of the generally recognized reasons for periodic continence exists. Granted the situation, is it permissible for the priest to suggest to the couple that they might consider the practice of periodic continence? The question is pertinent because, since the Sacred Penitentiary privately replied more than 80 years ago that a confessor might prudently suggest periodic continence to a penitent who has been practicing contraception, some seem to think that this is the only circumstance in which the suggestion may be made. We agree with Msgr. Riley when he writes: "Moreover, I should say that the practice of periodic continence may sometimes be suggested to persons who have serious reasons

¹⁴ A very difficult case that has increased in frequency since World War II is that of college and professional school students who want to marry but to practice periodic continence till they have finished their studies. For an excellent statement of the many aspects of this case, see Fr. Thomas, *op. cit.* (footnote 3 above), pp. 145-47.

¹⁵ John J. Lynch, S.J., "Notes on Moral Theology," *Theological Studies* 17 (June, 1956), 167-96. See p. 187.

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for not having children, even though there exists no danger of committing the sin of contraception."¹⁶ In view of the public teaching of Pope Pius XII and of the changed circumstances of our day, the "cautious insinuation" of the 1880s is no longer adequate to the situation.

It used to be that a policy of extreme caution governed not only the suggesting of periodic continence in the confessional, but also public and private instruction about this method of birth-regulation. This policy also was made obsolete by the words and example of Pius XII. Speaking of the physiological aspects of periodic continence, he said it is the duty of the medical profession to impart this knowledge either in private consultations or in serious writings.¹⁷ Such explanations are not normally to be given by priests. The "serious writings" that the pope had in mind are not limited to strictly scientific publications; they are what might be termed scientific in a broad sense: that is, not merely popular, and certainly not sensational, works. Booklets written in non-technical language that lay people can understand would undoubtedly qualify as such serious writings. As for the priest, when the pope says it is not his duty to give such instruction, this means, it seems to us, that the duty does not usually come within the scope of the priest's functions as confessor or spiritual director. But there may be occasions when the priest, in his capacity as teacher of correct moral doctrine, may also have to present in outline at least those physiological and biological facts that are necessary to his audience's understanding of the moral doctrine. The main thing to be expected of the priest on such occasions is that he be sure of his scientific knowledge.¹⁸

¹⁶ Lawrence J. Riley, "Moral Aspects of the Practice of Periodic Continence," *The Homiletic and Pastoral Review*, 57 (June, 1957), 820-28. See p. 828.

¹⁷ Cf. AAS, 43 (1951), 844.

¹⁸ The standard rule for the priest-counselor, when a married couple needs

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As for teaching the moral principles about periodic continence, we believe that Pius XII's own conduct is an open rebuke to some local policies that have come to our attention.¹⁹ The pope did not hesitate to teach these principles in the vernacular to the whole world; for, though his words were spoken immediately to an audience of professional women, he had the text published in *L'Osservatore Romano* and then permitted it to be republished and translated into other languages. With his example as a norm, one must reasonably say that the Catholic moral teaching on periodic continence may and should be given to any mature audience that can profit by it: married people, youth preparing for marriage, students taking a religion course on marriage, and so forth.

We conclude these *obiter dicta* with two brief observations, one negative, the other positive. On the negative side, because so much confusion has been generated about the sinfulness of rhythm and especially about mortal sin, we want to repeat once more that today, as before the Address to the Midwives, no couple can in practice be accused of

physiological instruction with a view to practicing periodic continence, is to refer them to a physician who is interested in giving such help. In a large city, especially where there is a Cana Conference or a Catholic Marriage Bureau, this rule is easily followed. But there is a real problem in small towns and rural areas. In some of these cases, a priest may know that it is impossible to find a helpful physician, Catholic or non-Catholic. In that event, to have the couple get a book and to be sure they understand it is better than nothing; but even in this extreme case a priest should make no prediction about the probable effectiveness of periodic continence. We get the impression from reading *The Catholic Medical Quarterly* that much more has been done by British doctors to help couples even in remote areas than has been done by Catholic physicians in the United States. Cf. especially a note on the work of the Catholic Marriage Advisory Council, in *The Catholic Medical Quarterly*, 16 (January, 1963), 38-39.

¹⁹ E.g., that in premarital instructions the Catholic teaching on "birth control" is to be explained, but nothing is to be said about rhythm. How can one be said to know the complete Catholic teaching on the limitation of births without also knowing about periodic continence?

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mortal sin merely because of the use of rhythm without sufficient reasons. The sources of mortal sin in practice are two: the injustice of refusing intercourse to a partner who seriously and reasonably asks for it, and the unjustifiable courting of serious dangers to chastity and marital harmony. As we have seen, some of these cases are difficult to judge, and no priest has the right to refuse absolution except to a penitent who intends to do what is clearly a grave violation of the law of God.

On the positive side, we are happy to make a consoling observation. As confessor and spiritual director, the priest will deal with many saintly married people. For some of these people, a contributing factor to their holiness is the brave carrying of the cross of involuntary childlessness; for others, it is the fact that, despite serious obstacles, they are successfully rearing a large family; and for still others it is the fact that, despite a desire to procreate, they are for good reasons practicing periodic or continuous continence and making the adjustments required by their vocational ideal. Divine providence has not excluded any of these from the heights of sanctity. It is the privilege of a good priest to help and encourage all of them in the way the Holy Ghost is leading them.

3. Responsible Parenthood and Periodic Continence

"Responsible parenthood," writes Dr. Richard Fagley, "in the context of the population explosion, more often than not means restricted or limited procreation in view of the total responsibilities of parenthood."²⁰ And again, "'Responsible parenthood,' in fact, is becoming the preferred term throughout Protestantism for limiting the number of

²⁰ *The Population Explosion and Christian Responsibility*, p. 5.

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progeny.”²¹ Dr. Fagley’s words suggest the reasons why little seems to have been said about responsible parenthood fifty years ago and why today the words are becoming a popular slogan with the occasional connotation that Catholics favor irresponsible parenthood. Everyone has always agreed, however, that parenthood is a serious, responsible business. Catholics have not differed from their neighbors on that point. The truth is that fifty years ago we heard very little if anything about responsible parenthood, as that phrase is understood today, whether from Protestants, Catholics or non-believers. Why?

Undoubtedly the reasons are complex and we do not wish to oversimplify. For one thing there was little fear of a population problem at that time. But one cardinal factor must be stated candidly. Nobody thought of demanding in those days, and nobody thinks of demanding today, that the average husband and wife give up, in the name of the social good, for very extended periods of time, their personal right to sexual intercourse. Such a demand would not be considered reasonable by anyone except for the most pressing reasons, and usually for reasons of a very personal kind. Everyone has always recognized that such long periods of enforced abstinence, often for one, two or three years at a time, are an abnormal strain on the average couple, justified only by extraordinary circumstances. St. Paul’s injunction to “defraud not one another” is common sense.

Fifty years ago, however, the only legitimate means of family planning recognized either by Catholics, or by Protestants, or by the respectable public at large, was complete abstinence from intercourse over extended periods of time.

²¹ *Ibid.*, p. 235, note 2 to Chapter I.

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Contraception was almost universally rejected as immoral. The sterile period had not been determined with sufficient accuracy. Consequently we heard very little from anyone about responsible family planning. There were few, if any, churchmen, few social planners, who had the hardihood to crusade for responsible parenthood when that meant for the average couple sexual abstinence for years at a time. Protestants and others would not be campaigning for it to-day, we may be sure, unless they had changed their beliefs about contraception. Such a campaign is for them feasible in practice only because they have found a method, in their eyes now become morally acceptable, by which couples can plan a family responsibly while continuing to have intercourse regularly.

Something quite similar is true of Catholics, but not to the same extent. We, too, are talking more and more about responsible parenthood and family planning, though we may speak of it in terms of Christian prudence rather than of responsible planning. But as a practical matter we could not be talking thus unless we, too, had found a workable method, morally acceptable in our eyes, which enables many couples to plan a family responsibly while continuing to have legitimate intercourse more or less regularly.

In former times so little was known about human reproduction that there was a widespread tendency to consider the size of the family a matter which God, not man, decided. This is still an ingrained, cultural attitude of innumerable Catholics. When complete abstinence for long periods of time was the only legitimate method of child spacing, it happened much more frequently that the wiser and more prudent course in practice actually was to leave the size of the family largely to divine providence, and not

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to attempt such difficult measures. Except in rare cases, the only reasonable solution to a problem of family limitation was to leave the matter to God.

The discovery of the sterile period has changed that state of affairs. A great many more Catholics are now confronted with the new and basic question referred to earlier in this chapter: what are the respective roles of divine providence and human providence in the planning of their families? It is a basic question because it involves decisions as to how in the concrete circumstances of their lives they can best fulfill their twofold vocation, a vocation both to parenthood and to conjugal love. The sphere of human providence has clearly been widened. That there exists this widened area of personal decision-making is simply a fact that can no longer be disregarded or evaded. Given a situation where the number of the children is a serious practical problem, if there exists a legitimate, effective, and reasonably available method of regulating the size of the family, Christian prudence requires that this method must be taken into consideration along with other factors when these personal decisions are to be made.

Man's reason makes him share in divine providence in a special way. When reason makes new discoveries of a morally acceptable kind, he must use his reason to plan his own life accordingly. This very use of reason is in accordance with divine providence. In fact it is not a case of human *versus* divine, but human providence sharing in the divine. "Among all others," says St. Thomas, "the rational creature is subject to divine providence in a certain more excellent way, *insofar as he partakes of a share of providence by being provident both for himself and others.*"²²

²² I, IIae, q. 91, a. 2, corp. Italics added.

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There are many cases today when it is no longer the part of prudence to put the whole problem of family planning in the hands of God. And the more effective periodic continence becomes for larger numbers of people, the more will we have to reconsider our attitudes towards the respective roles of human and divine providence in this matter. The need of such reconsideration became inevitable at least from the moment when Pius XII asserted "the legitimacy, and, at the same time the limits—in truth very wide—of a regulation of offspring, which, unlike so-called 'birth control,' is compatible with the law of God."²³

Furthermore, this is the pastoral problem about which more and more Catholics are consulting spiritual advisors and confessors today. It cannot be solved by disparaging periodic continence, and piously reminding the faithful that God will provide. They may be all too well aware that they themselves cannot provide, and that when the next child comes it will be a relative or a public agency that will have to provide. Nor can it be solved by a casuistry of sin. First of all we have developed no such casuistry; but more to the point the question of any obligation under pain of sin, especially of grave sin, is rarely the problem. The problem is to arrive at a practical judgment as to when reliance on divine providence should be supplemented by the exercise of human providence.

Human providence does not mean a calculation of merely human values, much less merely materialistic ones. The human providence we speak of is an exercise of *Christian* prudence. Responsible parenthood, to be truly Christian, must put the things of God's supernatural order in the first place. Other considerations, those of the natural order, and

²³ AAS, 43 (1951), 859.

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those of the merely material order, must be kept in their proper place. The basic philosophy of secularistic planners is essentially different from ours. "In our lexicon, unlike theirs, you will find such words as 'God's will,' 'Divine Providence,' 'duties of the married state,' 'blessings of the large family,' 'conjugal chastity,' 'supernatural help,' and the like."²⁴ This does not mean, however, that the economic, social, medical and eugenic "indications" mentioned by Pius XII are merely material considerations. They usually have an important role to play in the spiritual and religious welfare of the family if only they are evaluated in spiritual perspective. Furthermore, a thoroughly Catholic notion of responsible parenthood includes the fostering of religious and priestly vocations, the training of children so that they will not marry before they are sufficiently mature and otherwise prepared for the vocation of marriage, and sufficient spacing of children so that they can be reared according to reasonably adequate religious and cultural standards.²⁵

Up to this point we have not mentioned the population problem as a factor in the morality of periodic continence. The reason is that as a practical matter demographic considerations of a general kind have little to do with the prudential judgment the average Catholic couple in this country is called upon to make as to the size of their family. Statistical considerations as to population increases, whether national or world-wide, play an insignificant role (and rightly so, in our opinion) in the formation of such a judgment.

It can be seriously doubted also, whether such consider-

²⁴ George A. Kelly, "Responsible Parenthood," *America*, 107, (May 5, 1962), 205-207 at 207.

²⁵ These latter considerations also have an indirect bearing on the solution of population problems.

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ations really play an important part in the thinking of any couples, of whatever religious beliefs, including those who solve their family problems by resorting to contraception. The public propaganda of organized contraceptionism makes much of the population "explosion" as a reason for practicing contraception—more especially in certain foreign countries. But is it not fair to presume that those who frequent its clinics or read its literature are moved by much more personal considerations? Do the doctors, nurses and social workers of Planned Parenthood really expect their clients in this country to space their children, or to avoid them entirely, because of any appeal to their sense of civic duty to help solve the population problem? Would such considerations have any appreciable weight with a normal couple who seriously wanted to have more children and were physically, economically and otherwise able to do so? Our own conviction is that the answer to these two questions should be negative.

Are we then to say that population problems have no bearing at all on the morality of periodic continence? No. In the first place, we have seen that there is a sense in which the affirmative obligation to procreate is based partly on legal justice, and this implies that population needs are in some way a partial measure of the obligation. Furthermore, we have seen that it is soundly probable that once a family has made its proper contribution to the population needs, there is no further obligation on that score to procreate. Finally, it may well be that population pressures in a given region may constitute a legitimate excusing cause from the affirmative obligation, and that at some future date population pressures could conceivably reach the point where they would create strict duties not to procreate.²⁶

²⁶ Despite some assertions to the contrary there is to our knowledge no

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But speaking for today, and with the United States and countries in similar circumstances in mind, we would offer the following opinions: (1) The population increase does not by itself constitute a general excusing cause from the affirmative obligation to procreate. (2) A fortiori it imposes no strict duty to avoid procreation. (3) The latter statement is true even of those married couples who could effectively and without notable hardship practice periodic continence. Where practical family decisions are concerned there is and must be a world of difference between large scale social planning and individual family responsibility. Nor should anyone conclude precipitately from the legitimacy and desirability of certain national or worldwide population goals to a moral obligation incumbent on any individual couple to contribute to those goals whether by procreating or not procreating. The matter of procreating or not procreating involves immediate personal and social factors in family life which would almost always outweigh general demographic considerations in arriving at a prudent Christian decision. (4) But we do believe that moralists should open up further the question of a possible obligation to make use of periodic continence, not for mere demographic reasons, but for personal, or family, or social, or religious reasons—in a word, for all those reasons which have a proximate bearing on the family, and which therefore have a legitimate place in arriving at a prudent, Christian decision as to the size of the family.

As for speculations about the distant future, they have little urgency for the practical moralist. Even as theological speculations, however, they cannot be adequately consid-

authoritative ecclesiastical document which excludes demographic considerations from the factors which might justify the practice of periodic continence. In fact it seems to us that the Address to the Midwives has contrary implications.

Periodic Continence Today

ered without constant reference to a fundamental Catholic doctrine: the belief that divine providence has a special care for the ultimate destiny of the human race. In saying this we are not blinding ourselves to the fact of a population problem, nor are we disclaiming our share in the collective duty to try to solve it. All possible efforts should be made to increase and distribute resources so that all peoples can live decently.²⁷ And when we Catholics think of "resources" we must remember that these include the corporal and spiritual works of mercy, and the important part played by our celibate clergy and religious, and by our laity both married and celibate, in the carrying out of such works. But as believers in a loving Providence and the special care He has for the ultimate welfare of His human children, we are less likely to despair over the population question than those who think the future of the human race depends entirely on our own human contrivings.

²⁷ A discussion of the many papal statements on population problems is not within the scope of this book.

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